



**REPORT OF
THE
STATE AUDITOR**

**Division of Administrative Hearings
Department of Personnel/GSS**

**Performance Audit
November 2000**

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STATE OF COLORADO

J. DAVID BARBA, CPA
State Auditor

OFFICE OF THE STATE AUDITOR
(303) 866-2051
FAX(303)866-2060

Legislative Services Building
200 East 14th Avenue
Denver, Colorado 80203-2211

November 9, 2000

Members of the Legislative Audit Committee:

This report contains the results of the performance audit of the Division of Administrative Hearings. This audit was conducted pursuant to Section 8-47-101(3)(d)(II), C.R.S., which requires the Office of the State Auditor to conduct a performance review of the administrative law judges who hear workers' compensation cases in the Division of Administrative Hearings.

This report presents our findings, conclusions, and recommendations, and the responses of the Division of Administrative Hearings.

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J. DAVID BARBA, CPA
State Auditor

**Division of Administrative Hearings
Department of Personnel/GSS
Performance Audit
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Authority, Purpose, and Scope

This audit of the Division of Administrative Hearings (the Division) was conducted under the authority of Section 8-47-101(3)(d)(II) et seq., C.R.S. This statute requires the State Auditor to conduct a performance review of the administrative law judges (ALJs) who hear workers' compensation cases in the Division of Administrative Hearings. This audit was conducted according to generally accepted government auditing standards. Audit work was performed from May 2000 through October 2000.

The purpose of the audit, based upon the statutory mandates of Section 8-47-101, was to determine:

- The timeliness of workers' compensation hearings and decisions.
- The workload or number of cases assigned to each administrative law judge.
- The number of decisions that are reversed on appeal.
- The public perception of the quality of the performance of the Division of Administrative Hearings with respect to matters arising under the Workers' Compensation Act of Colorado.

In response to stakeholder concerns, we also examined these same areas for Department of Human Services, Department of Health Care Policy and Financing (HCPF), and Department of Regulatory Agencies cases handled by the Division. In addition, we reviewed the management of the Division's finances and determined the implementation status of recommendations from our 1997 statutorily required audit.

This report contains findings and 13 recommendations for improving the Division's hearing practices and financial management. We would like to acknowledge the efforts and assistance extended by the management and staff at the Division of Administrative Hearings; the Division of Workers' Compensation; and the Departments of Human Services, Health Care Policy and Financing, and Regulatory Agencies. The following summary provides highlights of the audit comments, recommendations, and responses contained in the report.

For further information on this report, contact the Office of the State Auditor at (303) 866-2051.

Financial Management

The operations of the Division of Administrative Hearings are funded through service fees paid by billed agencies. Funds used to pay for administrative law services are appropriated annually to state agencies by the General Assembly. The Division then bills each agency monthly on a per hour basis for services provided.

We analyzed the financial management of the Division during Fiscal Year 2000. We found that:

- The Division billed Human Services about \$30,000 and Regulatory Agencies about \$1,500 for services provided to the Division of Workers' Compensation and HCPF from January to June 2000. In addition, we identified more than \$107,000 in other billings that may have not been appropriate.
- The Division did not bill the Division of Workers' Compensation and HCPF for nearly \$350,000 in services provided.
- More detail is needed in bills submitted to Human Services. This would help Human Services' representatives better monitor charges for administrative law services.
- The Division has not equitably and accurately billed client agencies for training activities.
- The funding structure for the Division does not encourage the Division to be efficient and focus its resources on the areas where they are most needed. Instead, the Division must direct its resources to areas where funding is available.

We recommend that the Division improve its financial management of the State's administrative law services. Specifically, the Division should (1) establish policies and procedures regarding proper billing practices; (2) assess the number of hours required for workers' compensation issues and propose changes in the amount appropriated; (3) establish and implement a policy requiring ALJs and paralegals to specify case numbers when documenting time spent on Human Services cases; (4) recommend the costs of training activities be included as overhead in the rates charged; (5) define the activities that should be billed to training and how ALJs and paralegals should allocate their time; and (6) evaluate alternatives for funding administrative law services and propose necessary changes.

Timeliness of Hearings and Decisions

We evaluated whether the Division was meeting time requirements for holding hearings and issuing decisions. We found that:

- The Division did not hold 63 percent (913 cases) of the workers' compensation hearings within the 100-day time requirement in Fiscal Year 2000. In addition, the Division did not hold 14 percent (223 cases) of the Human Services, HCPF, and Regulatory Agencies hearings within the 90-day time limit.
- A high turnover rate, a lack of training, and a large backlog within the Division's docketing section has greatly contributed to the problems with scheduling hearings within the time requirements.
- The Division's ALJs did not issue 26 percent (248 decisions) of their workers' compensation decisions within the required time frames in Fiscal Year 2000. In addition, the Division's ALJs did not issue about 10 percent (85 decisions) of their decisions for Human Services, HCPF, and Regulatory Agencies within the time limits.
- Increased workload for the ALJs greatly contributed to the backlog in the issuance of decisions.

We recommend that the Division improve the timeliness of hearings and decisions by (1) providing training to support staff on scheduling hearings, ensuring that all support staff positions are filled timely, and eliminating the backlog in the scheduling process; and (2) evaluating the current docketing system to determine if changes are needed in the number of hearings scheduled for each ALJ and eliminating backlogs resulting from scheduling problems.

Workload

We reviewed the workload distribution for the ALJs and found that:

- Workload distribution varied greatly among the ALJs.
- Since Fiscal Year 1996 the number of workers' compensation merit hearings conducted by the Division decreased by 37 percent. In Fiscal Year 1996 the Division held 2,117 merit hearings compared with 1,325 in Fiscal Year 2000.
- Since Fiscal Year 1996 the average number of workers' compensation docket days scheduled per month has risen from 70 days to 112 days, an increase of 60 percent. This contributed to a 75 percent increase in the time ALJs took to issue decisions.
- The Division implemented subject-matter rotation of the ALJs without a clear and defined plan for applying it and measuring its effectiveness. This lack of planning resulted in an unmanageable workload for the ALJs assigned to workers' compensation.

We recommend that the Division improve how it assigns cases and schedules hearings for ALJs.

Reversal Rates

We evaluated the reversal rates on workers' compensation, Human Services, HCPF, and Regulatory Agencies decisions reviewed in Fiscal Year 2000. We found that the Industrial Claim Appeals Panel (ICAP) reversed 65 ALJ workers' compensation decisions (20 percent) in Fiscal Year 2000. The percentage of workers' compensation decisions reversed in Fiscal Year 2000 increased from the 1992 and 1997 audits. In comparison, the reversal rates for Human Services (1.4 percent reversal rate), HCPF (3 percent), and Regulatory Agencies (0 percent) were significantly lower.

We recommend that the Division seek to lower the reversal rates by continuing to evaluate the trends and common reasons for reversals and providing appropriate training to the ALJs on these issues.

Public Perception

We received completed surveys from 291 individuals recently involved in the workers' compensation hearings process and 87 individuals involved in Human Services, HCPF, and Regulatory Agencies hearings. Survey participants rated the Division's hearing practices on five factors: timeliness of hearings; timeliness of decisions; professionalism of staff, including ALJs, schedulers, and other staff (e.g., court reporters); fairness of staff; and fairness of procedures. In general, the survey participants rated these five factors in the acceptable range. Survey participants rated timeliness of hearings and decisions the lowest. Although participants rated the factors as acceptable, they raised several concerns regarding the Division's hearings process, including the slowness of the scheduling of hearings and issuance of decisions, the ALJs' lack of knowledge of the rules and regulations related to the various agencies, the chaos within the Division, and problems with documentation related to the hearings process.

In our 1997 audit report we recommended that the Division improve its services to the public by reviewing our survey results and developing a plan to identify key areas for improvement and solutions to the noted problems. The Division did not use the 1997 survey results. Due to the numerous problems we identified with the Division during the current audit, we recommend that the Division use the 2000 survey results to improve its services.

Implementation of Prior Audit Recommendations

In May 1997 the Colorado Office of the State Auditor issued a statutorily required audit report on the workers' compensation hearing processes at the Division of Administrative Hearings. The report contained 11 recommendations for improving the Division's workers' compensation activities. The Division agreed with all recommendations.

We found that the Division has taken steps to address some of the recommendations. However, many of the concerns identified in 1997 remain problems today. For example, in 1997 we found that

the Division had not collected or recorded on the State's accounting system more than \$520,000 for services provided to the Division of Workers' Compensation since Fiscal Year 1992. We found that this practice has continued. In Fiscal Year 2000 the Division did not bill the Division of Workers' Compensation for more than \$300,000 for services provided.

The Division agrees with our recommendations. Responses can be found in the Recommendation Locator on pages 7 through 9 of this report.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	18	Determine what actions are needed to remedy any federal reimbursement issues; establish policies and procedures regarding proper billing practices; and make adjustments to budget estimates.	Division of Administrative Hearings	Agree	January 1, 2001
2	20	Assess the number of hours required for workers' compensation issues and propose changes in amount appropriated; improve monitoring of amount of services provided compared with available funding; inform client agencies of potential budget shortfalls and recommend a supplemental be requested; and record all amounts billed on the State's accounting system.	Division of Administrative Hearings	Agree	October 2000
3	22	Establish and implement a policy requiring administrative law judges and paralegals to specify case numbers when documenting time spent on Human Services cases.	Division of Administrative Hearings	Agree	December 1, 2000
4	24	Recommend the costs of training activities be included as overhead in the rates charged to client agencies.	Division of Administrative Hearings	Agree	February 1, 2001
5	25	Define the activities that should be billed to training and how administrative law judges and paralegals should allocate their time; develop written agreements with client agencies detailing the number of training hours that will be billed and what the hours will include.	Division of Administrative Hearings	Agree	February 1, 2001

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
6	29	Evaluate alternatives for funding administrative law services, including a pooled funding arrangement and using all general funds; determine the most cost-effective alternative and propose necessary changes.	Division of Administrative Hearings	Agree	January 2001
7	36	Provide training to support staff on scheduling hearings; clarify support staff responsibilities; ensure support staff positions are filled timely; eliminate backlog in scheduling process; and periodically monitor the timeliness of hearings.	Division of Administrative Hearings	Agree	January 2001
8	44	Evaluate current docketing system to determine if changes are needed in the number of hearings scheduled for each administrative law judge; eliminate backlogs resulting from scheduling problems; monitor timeliness of decisions; reinstate timeliness of decisions on administrative law judge performance evaluations; and revise the Presiding Judge's responsibilities.	Division of Administrative Hearings	Agree	May 2001
9	54	Develop a plan for applying subject-matter rotation and measuring its effectiveness; modify the docketing process; and provide training to docketing staff on modifications made to the docketing process.	Division of Administrative Hearings	Agree	April 2001
10	57	Assess costs and benefits of relying on court reporters or a tape recording system to document hearing activities.	Division of Administrative Hearings	Agree	April 2001

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
11	63	Analyze reversal decisions to identify trends; provide training to administrative law judges on common reversal reasons; and emphasize appeals and reversals in administrative law judges' performance evaluations.	Division of Administrative Hearings	Agree	October 2000
12	66	Assign full-time staff member to oversee docketing section; train staff on documentation procedures and how to enter and access information in computerized systems; ensure there are an adequate number of staff to maintain records; eliminate backlog in docketing section; and monitor information entered into computerized systems.	Division of Administrative Hearings	Agree	January 2001
13	91	Review analysis of our public perception survey results; identify key areas for improvement; monitor progress toward meeting goals; incorporate feedback from survey results into administrative law judges' performance plans and evaluations.	Division of Administrative Hearings	Agree	July 2001

Description of the Division of Administrative Hearings

Background

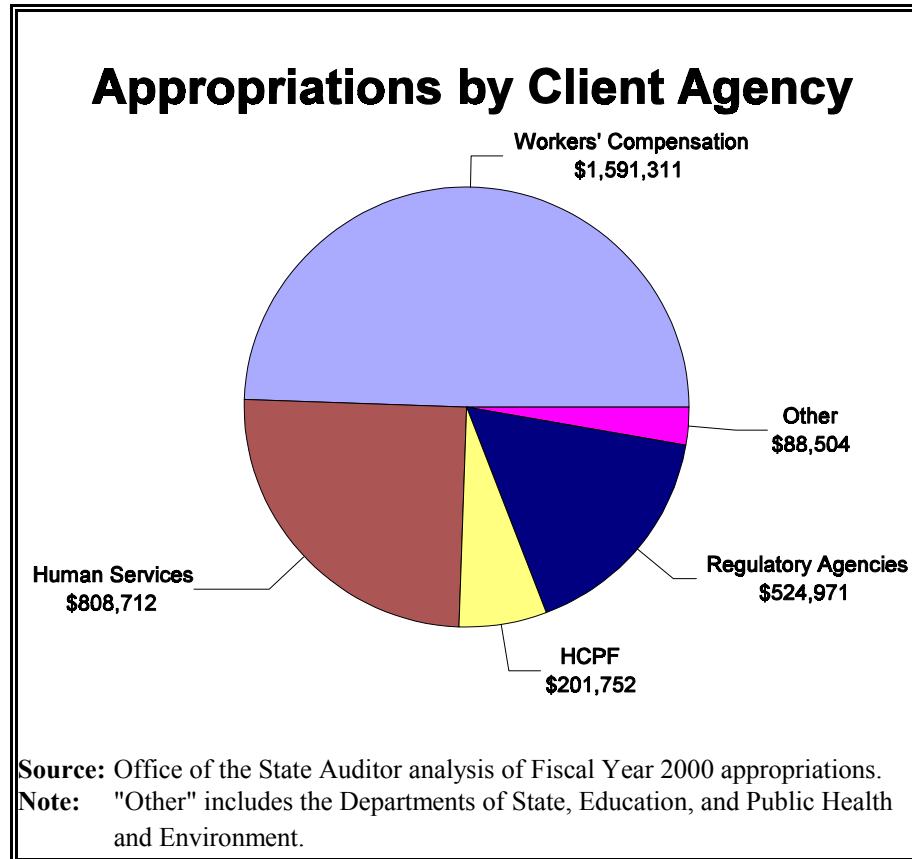
The Division of Administrative Hearings (the Division), a part of the Department of Personnel/General Support Services (GSS), was established by statute in 1976. The Division provides adjudication services to more than 50 state departments, agencies, and boards, including Human Services, Regulatory Agencies, Health Care Policy and Financing, Secretary of State, and the Division of Workers' Compensation (Department of Labor and Employment). The Division's mission is "to provide high quality adjudication services for the State of Colorado in a timely, efficient, and cost-effective manner with respect for the dignity of individuals and their due process rights." The Division maintains its primary office in Denver and an office in Grand Junction. It holds hearings in other locations (e.g., Colorado Springs, Boulder, Pueblo, Durango, Glenwood Springs, and Fort Collins) when necessary.

Colorado uses a central panel structure for administrative hearings. The central panel hearings system differs from other administrative law decision-making forums in that administrative law judges are independent from the agencies for which they conduct hearings. The non-central panel states have administrative law judges (ALJs) or hearing officers employed within the individual agencies. Workers' compensation adjudication processes are not typically part of a central panel approach. Colorado, currently, is the only state that includes workers' compensation as part of its central panel.

Budget and Funding

The Division was appropriated \$3.2 million and 39.6 FTE, including 16 ALJs, for Fiscal Year 2000. The Division, which is cash-funded, bills agencies for adjudication services. Agencies receive individual appropriations to purchase the Division's services. The Division is supposed to operate on a break-even basis. In other words, its revenues from agency billings should cover all its expenses. Each year the Joint Budget Committee sets the Division's billing rates for ALJs and paralegals. Its Fiscal Year 2000 hourly billing rates were \$103.82 for ALJs and \$44.76 for paralegals. The billing rates cover overhead expenses, such as support staff and office space rentals, in addition to ALJ and paralegal salaries.

The Division of Workers' Compensation and the Departments of Human Services, Regulatory Agencies, and Health Care Policy and Financing are the Division's largest client agencies. As shown in the following chart, Workers' Compensation accounts for about 50 percent of the Division's appropriations.



Organization

The Department of Personnel/GSS reorganized the Division of Administrative Hearings in December 1998 in response to a June 1998 departmental management review. The purpose of the review was to “address concerns that the Division was not responding effectively or timely to problems reported by client agencies and their customers.” Additionally, the review team reported that these issues were:

...ongoing problems previously reported to the Division. The general perception is that Division management has not been proactive and minimal progress [in improving] has been made.

Prior to the reorganization, the Division had two sections: Workers' Compensation and Regulatory/Human Services (which also included adjudication services for all other types of cases, such as Health Care Policy and Financing). Ten ALJs were permanently assigned to Workers' Compensation and eight were assigned to all other types of cases. The Chief ALJ spent half of his time on workers' compensation cases and half on administering the Division. Paralegals and support staff were also assigned specifically to either Workers' Compensation or Regulatory/Human Services. Docketing functions for the two units were also done separately. In general, ALJs and support staff were not cross-trained.

Following the management review, the Department decided to reorganize the Division. Specifically, the Department:

- Appointed a Director to be responsible for managing the Division's administrative and business activities.
- Assigned a Presiding ALJ to supervise all ALJs.
- Consolidated the two sections (Workers' Compensation and Human Services/Regulatory) and combined the individual dockets and support staff under one supervisor.
- Instituted a policy of full rotation of ALJs. Each ALJ would hear all types of cases.

Financial Management

Chapter 1

Background

As discussed in the Description section, the Division of Administrative Hearings (the Division) bills client agencies on an hourly basis for administrative law services. Client agencies receive individual appropriations to purchase the Division's services. The Division is supposed to operate on a breakeven basis. The Joint Budget Committee (JBC) sets the administrative law judge (ALJ) and paralegal billing rates annually. To determine the rates, the JBC analyst divides the Division's total costs by the number of administrative law hours required statewide. The number of administrative law hours required statewide is based on each agency's prior year's usage and any estimated increases or decreases.

According to Joint Budget Committee staff, the State adopted this type of funding structure over 20 years ago as a means of improving accountability for administrative law services. Theoretically, this structure's main accountability mechanism is the buyer-seller relationship that is established by allowing client agencies to "hold the purse strings" while requiring the Division to "earn" its funding by billing agencies for providing services.

Poor Management Contributed to Financial and Operational Problems

As discussed throughout this report, we found many problems with the Division and its provision of administrative law services. Responses from our public perception survey indicate that many of the Division's stakeholders are very dissatisfied with the Division and the services it provides. As discussed in Chapter 3, many survey participants believe the Division is in "chaos" and immediate changes are needed.

A majority of the problems identified throughout this report are the result of management decisions made from December 1998 through July 2000. These problems, as discussed in greater detail later in the report, include:

- **Billing practices.** The Division inappropriately billed two client agencies for more than \$30,000 from January to June 2000. In addition, the Division chose not to collect nearly \$350,000 for services provided to two other client agencies during this same time period. This issue is discussed later in this chapter.
- **Increased Workload.** Management failed to fill vacant administrative staff positions in a timely manner. In addition, when these positions were filled, adequate training was not provided to the new staff. These actions resulted in untimely hearings. This issue is discussed in Chapter 2.
- **Rotation Implementation.** Management implemented subject-matter rotation in an inefficient manner. Some ALJs had heavy workloads while others had very little to do. This issue is discussed in Chapter 2.

Upon discovering the questionable billings, we informed the Executive Director of the Department of Personnel/GSS of this problem. The Department initiated an internal investigation of this matter. The Division Director resigned as a result of the internal review.

Billings of About \$140,000 to Client Agencies Are Questionable

We reviewed the billing statements submitted by the Division to client agencies for January to June 2000 and compared them with the billing records maintained by the individual ALJs and paralegals. We identified approximately \$140,000 in questionable billings submitted to client agencies from January to June 2000. Specifically, we found:

- **The Division billed the Department of Human Services and the Department of Regulatory Agencies for services provided to other client agencies.** According to the Division Director's instructions, the Division billed Human Services about \$30,000 and Regulatory Agencies about \$1,500 for services provided to the Division of Workers' Compensation and the Department of Health Care Policy and Financing (HCPF) from January to June 2000.
- **The Division billed client agencies more than \$90,000 for training sessions that may not have been provided.** Specifically, from January to June 2000 the Division billed client agencies (Human Services, HCPF, and Regulatory Agencies) for nearly 900 hours of training. The Division's

Presiding Judge billed client agencies almost 400 of these hours (43 percent), or about \$40,500, a majority of which was billed to Human Services. According to the Presiding Judge, the Division's Director instructed him to bill the time he spent on administrative activities to training, quality assurance, and conference activities. The Presiding Judge also stated that many of his hours were billed to Human Services because the Division was trying to increase its billings to this agency for budget purposes. Of the remaining 500 hours billed to client agencies, we were unable to determine if training activities actually occurred.

- **The Division billed client agencies nearly \$17,000 for time charged by the Division Director.** From January to June 2000 the Division Director billed more than 160 hours to client agencies (Human Services, Regulatory Agencies, Public Health and Environment, and the Secretary of State) for non-hearing related services. According to JBC figure-setting documents for Fiscal Year 2000, however, the cost of services provided by the Division Director is included in the hourly rate charged by ALJs and paralegals. Therefore, charging agencies an hourly rate for this time may not have been appropriate.

Questionable Billings Will Negatively Impact the Division's and Client Agencies' Finances

Client agencies that receive federal funds may be required to reimburse the federal government for the federal portion of any amounts wrongly billed by the Division. For example, the federal government may require the State to reimburse a portion of the \$30,000 overbilled to Human Services. According to Department of Human Services personnel, federal funds covered about 26 percent of Human Services' indirect costs in Fiscal Year 2000. This means Human Services may be required to reimburse the federal government about \$7,700 for the \$30,000 in overbillings. HCPF and Public Health and Environment also receive a significant amount of federal funding. The Division's questionable billings may also have a federal impact on these agencies.

In addition, because the Division billed some client agencies for services not actually provided, future appropriation calculations will be based on inflated figures. As discussed previously, the Joint Budget Committee determines the amount of administrative law hours to appropriate to each client agency based upon the prior year's usage. If these usage figures are overinflated and the JBC is unaware of this, the JBC will likely appropriate more funds to these client agencies than are actually needed.

Recommendation No. 1:

The Division of Administrative Hearings should work with the Office of the State Controller and its client agencies to determine what actions need to be taken to remedy any federal reimbursement issues. In addition, the Division should work with the Office of the State Controller and the Joint Budget Committee to establish policies and procedures regarding proper billing practices and make adjustments to budget estimates.

Division of Administrative Hearings Response:

Agree. Division staff will meet with the Department Controller, the State Controller, and with our major clients to assess what needs to be done to remedy any federal reimbursement issues. Division staff will also meet with the Budget Officers of customer state agencies prior to the Fiscal Year 2002 figure-setting process to discuss appropriation needs for Fiscal Year 2002. The Division will also continue to meet quarterly with budget staff of client agencies throughout each fiscal year to ensure that the Division and its client agencies communicate regularly about adjudication billing issues and hearing trends that may affect appropriations.

The Division Reduced Billings to Client Agencies by About \$350,000

In addition to the questionable billings discussed above, we found that the Division did not bill the Division of Workers' Compensation and HCPF for nearly \$350,000 in services provided. Specifically, the Division did not bill Workers' Compensation for about 3,700 hours, or \$330,000. This represents 37 percent of the total hours actually spent on Workers' Compensation activities. The Division did not bill HCPF for about 200 hours, or more than \$18,000. This represents 15 percent of the total hours actually spent on HCPF activities.

In February 2000 the Director of the Division of Workers' Compensation sent a memo to the Director of the Division of Administrative Hearings expressing concern over the amount billed to Workers' Compensation during the first seven months of the fiscal year. As of January 2000, with five months remaining in the fiscal year, the Division had spent \$1,121,600 of the \$1,591,311 (70 percent) appropriated to Workers' Compensation for administrative law services. From July 1999 to January

2000, the Division billed Workers' Compensation, on average, \$160,000 per month. From February to June 2000, however, the Division billed Workers' Compensation an average of about \$110,000 per month while continuing to provide the same level of service.

Similar memos were exchanged between the two directors in March 1999. At that time, the Director of Administrative Hearings stated that the Division would not bill Workers' Compensation for time spent on activities such as training, meetings, quality assurance, and conferences with staff because they were not considered "direct services." We found that the Division continued this billing practice into Fiscal Year 2000. For example, as discussed later in this chapter, the Division only billed the Division of Workers' Compensation for fewer than five hours of training from January to June 2000. However, we found that the ALJs spent more than 50 hours in training sessions related to workers' compensation issues.

Future Budget Appropriations Will Be Insufficient

The Division's failure to accurately report the actual hours spent on and the costs associated with providing administrative law services in Fiscal Year 2000 could adversely impact future appropriations to the Division and its client agencies. This is because, as we discussed earlier, the Joint Budget Committee relies upon the number of administrative law hours used by client agencies in past years to determine future appropriations to the Division and its client agencies. Because the Division reduced the number of hours actually billed to client agencies, it is likely the JBC will not appropriate a sufficient number of hours and funds to adequately meet the administrative law needs of the client agencies.

This has been an ongoing problem. We reported similar issues in the 1997 audit and recommended that the Division record all amounts billed to agencies on the State's accounting system. In addition, in July 1998 the Office of the State Controller instructed the Division to:

...record on COFRS the gross amount of billings for services provided by [the Division]. To the extent that those billings exceed fixed contract amounts, the Department should record on COFRS in a contra revenue account the amount of the write downs. This accounting treatment will ensure that the Department complies with generally accepted accounting principles related to revenue recognition for internal service operations.

The Division did not implement these instructions. This practice would ensure future appropriations are based on accurate information.

Recommendation No. 2:

The Division of Administrative Hearings should better manage its annual budget by:

- a. Conducting an assessment of the number of hours required for workers' compensation issues and proposing changes in the amount appropriated to the Division of Workers' Compensation based on the results of this assessment.
- b. Improving how it monitors the amount of services provided to each client agency compared with available funding.
- c. Informing client agencies of potential budget shortfalls as soon as they are discovered and recommending that client agencies request supplemental appropriations if necessary.
- d. Recording all amounts billed to client agencies on the State's accounting system.

Division of Administrative Hearings Response:

- a. Agree. The Division began discussing appropriation issues with the Division of Workers' Compensation in October 2000, and will continue those discussions throughout the remainder of the fiscal year. Assessing the appropriate number of hours required for Workers' Compensation hearings will be a collaborative effort between the Division of Workers' Compensation and the Division of Administrative Hearings based upon an analysis of several factors, including the number of hearings, length of time in hearing, length of time required for decision writing, and motions processing.
- b. Agree. The Division will monitor the amount of service provided to each client agency and ensure that workload and billing fluctuations are discussed with client agencies so that problems can be addressed immediately as necessary.
- c. Agree. The Division will inform client agencies of potential budget shortfalls and will recommend that client agencies request supplemental appropriations if necessary. The Division will also work proactively to reduce or eliminate budget shortfalls by working closely with client agencies to more accurately predict appropriation needs before

appropriations are set by the Joint Budget Committee. The Division will continue to identify and implement cost saving measures.

- d. Agree. The Division will continue to record all amounts billed to client agencies every month throughout each fiscal year.

Bills to Some Client Agencies Lack Sufficient Detail

As discussed previously, the Division bills client agencies on a monthly basis for the services it provides. Bills submitted to agencies include the number of hours charged by each ALJ and paralegal for the various billing categories, such as decision writing on the merits, file review, research, and conference with staff. In addition, Division policy states that ALJs and paralegals must document case numbers for time spent on HCPF cases due to federal tracking and reporting requirements. This information is also documented for Regulatory Agencies cases.

We found, however, the bills submitted to Workers' Compensation and Human Services do not provide the case number associated with the charges. Information obtained from our review indicates that it may not be practical or provide any benefit for case numbers associated with workers' compensation cases to be tracked. This is due to the large number of workers' compensation cases heard by the Division. Further, because the Division of Workers' Compensation is not a party to the actions, it does not require the same level of detail needed by other agencies. Yet, this information may be useful to Human Services because it or one of its agents is always involved as a party in the cases. On several occasions Human Services representatives have requested that the Division include case numbers in its billing statements. According to these representatives, Division management stated that they are unable to track this information in their billing system. As discussed above, the Division's billing system is capable of documenting this information.

Although the Division's billing system is capable of documenting case numbers for all agencies, Division management has chosen not to collect this information for Human Services. Thus, Human Services is unable to track charges associated with a particular case. This makes it difficult for agency representatives to monitor costs and determine if any charges are inappropriate.

Recommendation No. 3:

The Division of Administrative Hearings should establish and implement a policy requiring that administrative law judges and paralegals specify case numbers when they document the time spent on Human Services cases.

Division of Administrative Hearings Response:

Agree. The Division will immediately begin to include case numbers to document time spent on Human Services cases.

The Division's Billing Approach for Training Needs Revisions

As mentioned earlier, the Division bills client agencies for various activities performed by ALJs and paralegals, including training. From January to June 2000 the Division billed client agencies more than \$120,000 for training activities. The Division billed Human Services nearly 50 percent of this amount. At the same time, the Division billed Workers' Compensation, which receives about 50 percent of the Division's total appropriations, less than 1 percent of the total amount billed for training during this time period.

During the audit we reviewed the Division's training records for January to June 2000. We found that Division management sometimes charged client agencies for training in order to increase billings to those agencies. As mentioned earlier, we questioned whether 75 percent of the training hours billed during this time period actually involved training activities. The Division was unable to provide documentation showing that some type of training activity actually occurred for these billed hours. As also discussed earlier, the Presiding Judge admitted that many of the training hours he billed to client agencies did not actually involve training activities but were used as a means to increase billings to Human Services.

We identified other problems with how the Division billed client agencies for training activities during this time. Specifically:

- **The Division did not treat all client agencies equitably with regard to the number of hours billed for training activities.** As discussed earlier, the Division established an agreement with the Division of Workers'

Compensation in March 1999 stating that it would not bill Workers' Compensation for training and other administrative activities. As part of this agreement the Division did not bill Workers' Compensation for more than 50 hours spent by ALJs at a Workers' Compensation training held in March 2000. However, we found that the Division did not establish a similar agreement with its other client agencies. In fact, the Division billed the other client agencies, including Human Services, HCPF, Regulatory Agencies, Public Health and Environment, and the Secretary of State, for almost all of the training hours charged by ALJs and paralegals between January and June 2000.

- **The Division did not accurately bill for training sessions that covered general subject matters.** For example, the Division billed Regulatory Agencies for an entire training session related to changes in the Colorado Code of Judicial Conduct. The Division, however, did not bill any of the other client agencies for this training. According to Division policy, ALJs and paralegals should only bill client agencies for training activities that directly relate to these agencies. The training session just mentioned did not pertain to any specific client agency, and as a result, the Division should not have billed any of the agencies for it. If the Division believes it is necessary to bill for such training sessions, then it should evenly distribute the time spent on these sessions among its major client agencies.
- **Client agencies have little control over the number of hours the Division bills them for training activities.** We found that the Division did not establish agreements with most of its client agencies with regard to the type of agency-specific training it would provide or the number of hours it would bill for these activities. Such agreements would have provided more accountability with how the Division billed these agencies because agency personnel would have been more aware of the types of training offered by the Division. Further, such agreements would have either discouraged or prevented abuses by the Division on billing for training activities that never occurred.

Factoring Training Costs Into the Division's Overhead Would Improve the Training Program

Continuous education of ALJs and paralegals is crucial in providing quality services to client agencies. However, the Division's approach to training these staff members does not always focus on improving the quality of these services. Rather, the Division's focus is sometimes on generating enough revenue to cover its costs. This approach diminishes the purpose and effectiveness of training activities. Further, client agencies are not always benefitting from the training activities billed.

One way to improve the Division's training program is to factor costs for training activities into the Division's overhead. As mentioned earlier, overhead costs are included in the Joint Budget Committee's calculation of the ALJ and paralegal rates charged by the Division. Overhead consists of costs such as office space rentals, utilities, and salaries for administrative staff. If training costs were built into the overhead, the Division would not need to bill for time spent by ALJs and paralegals on training activities. This would allow the Division to focus its training efforts more on the needs of client agencies rather than on the Division's need to generate revenue.

To ensure accountability with this billing approach, the Division would need to create a training plan each year that details the types of training that would be offered. Further, the Division would need to specify the number of hours that would be involved in these training activities. The Department's 1998 Management Review recommended that the Division develop a formal and comprehensive training plan. However, the Division has not created a plan to date.

We believe the Division should pursue this funding approach for its training activities. However, until this funding approach is implemented, the Division should change how it operates its training program, including how it bills client agencies for training activities. The Division must ensure it equitably and accurately bills client agencies for these activities.

Recommendation No. 4:

The Division of Administrative Hearings should submit a proposal to the Joint Budget Committee for the Fiscal Year 2001-02 budget and each year thereafter recommending that the costs of training activities be included as overhead in the rates charged to client agencies. This proposal should include the total number of hours that will be spent by ALJs, paralegals, and other Division staff on training each year and the actual costs associated with these activities.

Division of Administrative Hearings Response:

Agree. The Division will submit a proposal to the Joint Budget Committee for Fiscal Year 2002 rate setting and each year thereafter requesting that the costs of training activities be included as overhead in the rates charged to client agencies. The training plan will be developed with input from client agencies.

Recommendation No. 5:

Until Recommendation No. 4 is implemented, the Division of Administrative Hearings should revise its approach for billing client agencies for training activities so that it is more accurate. To accomplish this, the Division should:

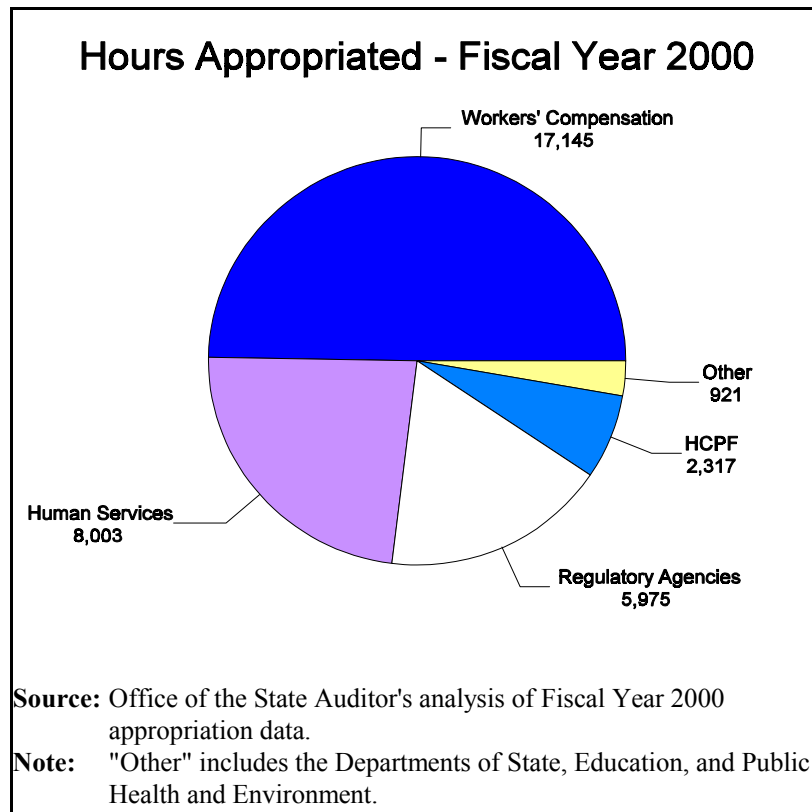
- a. Clearly define the activities that should be billed to training and how ALJs and paralegals are to allocate their time for each training session.
- b. Develop written agreements with its client agencies. These agreements should detail the total number of hours for training activities that will be billed to client agencies each year and what these training hours will include.

Division of Administrative Hearings Response:

- a. Agree.
- b. Agree. The Division will immediately begin to clarify to its staff what activities should be billed to training and how time allocations should occur. It will then begin to develop written agreements with client agencies regarding what portion of the billings will include training activities so that all parties know what portion of the monthly bills will incorporate training activities. All attempts will be made to implement these recommendations before the end of Fiscal Year 2001. No further training activities will occur without written agreements.

Changes May Be Needed in the Division's Funding Structure

As explained at the beginning of this chapter, client agencies receive appropriations each year to purchase administrative law services from the Division. In Fiscal Year 2000, seven state agencies received appropriations to purchase a total of 34,361 hours of administrative law services. As the following chart shows, Workers' Compensation and Human Services were appropriated the largest number of hours in Fiscal Year 2000.



The Division's Funding Structure Contributed to Many of Its Problems

According to JBC staff, the Division's current funding structure was adopted to improve accountability for administrative law services. Because client agencies receive the actual appropriation, they control the services requested of and provided by the Division. Overall, the funding structure does not encourage the Division to be efficient and focus its resources on the areas where they are most needed. Instead, the Division must direct its resources on the areas where funding is still available. Problems directly or indirectly related to the funding structure include:

- **The Division overbilled client agencies.** As discussed earlier in this chapter, the Division billed Human Services and Regulatory Agencies for services they did not receive because these agencies still had funding available.
- **The Division did not bill client agencies for services they received.** The Division did not bill Workers' Compensation and HCPF for administrative

law services that it provided, because these agencies no longer had funding available.

- **Division management inefficiently and inequitably distributed workload among the ALJs.** As discussed in Chapter 2, the Division assigned six ALJs strictly to hearing Human Services cases in order to increase billings to Human Services. The Human Services workload, however, did not support the need for this many ALJs. Because there were not enough hearing requests from Human Services, some ALJs "created" work that could be billed to Human Services. At the same time, because of the heavy workers' compensation caseload, the ALJs assigned to these cases were not able to complete their decisions in a timely manner. In addition, the Division Director instructed the ALJs assigned to Human Services not to assist the ALJs assigned to workers' compensation.
- **Division management did not fill ALJ and support staff positions.** As discussed in Chapter 2, when positions became open, management either did not fill the positions at all or did not fill them in a timely manner in order to reduce Division costs. As a result, the remaining staff were not able to keep up with their responsibilities, and a huge backlog developed.

The Division Should Evaluate Alternative Funding Structures

In addition to the problems discussed above, we identified problems with the funding structure itself. Specifically, we found:

- **Client agencies do not request supplemental appropriations when they run out of funds.** This is the biggest problem we found with the funding structure. When a client agency spends its entire appropriation for administrative law services, that agency is responsible for requesting a supplemental appropriation to cover additional costs. The Division does not have the authority to make this request. For many years the Division of Workers' Compensation has used more administrative law hours and funds than it has been appropriated. At the same time, Workers' Compensation management have refused to request supplemental appropriations for administrative law services.
- **The State cannot control the number of workers' compensation cases requiring hearing services.** Unlike other client agencies, the Division of Workers' Compensation is not a party to any of its cases. Either the claimant or the employer/insurer decides whether a case will go to hearing. While the

Division of Workers' Compensation controls the money paid for Division services, it does not control the number of cases requiring those services. This makes it difficult to accurately estimate workers' compensation caseload.

- **The Division cannot always stop hearing cases because a client agency is out of funding.** By law, the Division must schedule workers' compensation, Human Services, and HCPF hearings within certain time frames. Therefore, the Division must continue to schedule hearings for these types of cases, even though the agencies involved cannot pay for the services provided.

We found many of these same problems in our 1997 audit of the Division. In addition, we found similar types of problems in our January 1998 audit of the Colorado Department of Law, which is funded similarly to the Division. In both audits, we recommended that alternative funding structures be evaluated and proposed to the Office of State Planning and Budgeting and the Joint Budget Committee.

In August 2000 the Governor's Task Force on Civil Justice Reform issued a report on the civil justice system in Colorado. This report addressed the issue of how administrative adjudication services are provided in the State. The Task Force recommended that all administrative law services in the State be consolidated into one division. In addition, the Task Force suggested that each agency's current administrative law services allocation be directly appropriated to the new division. According to the Task Force, this funding structure would be more cost-effective and would improve accountability.

Regardless of whether the Task Force recommendations are implemented, the Division needs to research and evaluate alternative funding methods that would address the current problems and ensure accountability. Possible funding alternatives include:

- **Using a pooled funding arrangement that would require agencies to contribute funding to operate the Division based on a formula that reflects historical usage and other key factors.** A formula could be developed, similar to the one currently used by the JBC, that estimates each agency's contribution to the Division's operating expenses based on historical usage, anticipated needs, and other factors. This money would then be appropriated directly to the Division. Future agency contributions would be adjusted each year on the basis of the previous year's actual expenditures and other factors. Because funding for Division services currently comes from so many sources, it would be important under this arrangement for Division management to properly account for and monitor the amount of time spent

on providing services to each agency. In addition to receiving funds from each of its client agencies, another possibility is for the Division to receive a small general fund appropriation that would give it flexibility to move some funding where it is needed most. Even without the additional general funds, however, this funding arrangement would allow the Division to request its own supplemental appropriation if needed.

- **Using only general funds to operate the Division.** This approach would simplify the system by eliminating the need to bill agencies. This would also eliminate the buyer/seller relationship between the Division and its client agencies. Moving to a general-funded division would not increase the State's overall expenditures but would instead change the source of funds used to support the administrative law services. Currently the Division receives a majority of its funding from the Workers' Compensation Cash Fund.

The first option would allow the State to continue to fund the Division with various types of funds, including cash and federal funds, and would require a minimal amount of general funds.

Recommendation No. 6:

The Division of Administrative Hearings should work with the Office of State Planning and Budgeting and the Joint Budget Committee to evaluate alternatives for funding administrative law services. Alternatives should include, but not be limited to, models that create a pooled funding arrangement and use only general funds to operate the Division. On the basis of the findings from this evaluation, the Division should determine the most cost-effective alternative and propose any necessary changes to the Department of Personnel/General Support Services, the Office of State Planning and Budgeting, and the Joint Budget Committee for Fiscal Year 2002-03.

Division of Administrative Hearings Response:

Agree. The Division will work with the Office of State Planning and Budgeting and with the Joint Budget Committee to evaluate alternatives for funding administrative law services. Once a model is identified that encompasses both cost-effectiveness and accountability issues, the Division will propose necessary changes to all parties for Fiscal Year 2003.

Hearings Processes

Chapter 2

Background

As discussed in the Description section, the Division of Administrative Hearings (the Division) provides adjudication services to more than 50 state departments, agencies, and boards. These agencies include the Departments of Human Services, Regulatory Agencies, Health Care Policy and Financing (HCPF), and the Division of Workers' Compensation. Section 8-47-101(3)(d)(II), C.R.S., requires the Office of the State Auditor to conduct a performance review of the administrative law judges (ALJs) who hear workers' compensation cases in the Division. The review must include:

- The time elapsed from the date of hearing until decisions are given by the administrative law judges.
- The time elapsed from the point at which the file is complete and the case is ready for order until the decision is given by the administrative law judges.
- The number of decisions that are reversed upon appeal to the Industrial Claim Appeals Panel and to the Court of Appeals.
- The number of cases assigned to each administrative law judge.
- The public perception of the quality of the performance of the Division of Administrative Hearings with respect to matters arising under the "Workers' Compensation Act of Colorado." This issue is discussed in Chapter 3.

We also reviewed the same information for the other three major users of the Division's services—Human Services, HCPF, and Regulatory Agencies. The hearings processes for each of the Division's major client agencies are summarized below. Because the process is similar for Human Services and HCPF, we combined our summary for these two agencies. Throughout the report we separate workers' compensation findings from our findings for the other agencies.

Workers' Compensation

Under the Colorado Workers' Compensation Act, when an individual suffers a work-related injury and is not satisfied with an insurance carrier or employer's decision regarding benefits, that individual has the right to request a formal hearing before the Division of Administrative Hearings. Once an application for hearing has been filed, the Division must schedule a hearing within 80 to 100 days. At the hearing, which is held before an ALJ, parties present evidence supporting their position in the case. Once the hearing is completed, the ALJ has 30 calendar days to complete a written order. This order decides the issues discussed at the hearing. If the parties involved in the hearing are not satisfied with the ALJ's decision, they have the right to appeal the decision to the Industrial Claim Appeals Panel (ICAP) and possibly the Colorado Court of Appeals.

Human Services / Health Care Policy and Financing

In addition to workers' compensation issues, the Division also hears cases for the Departments of Human Services and HCPF. These cases include disputes over the denial of or changes in benefits, such as food stamps, Colorado Works, and Medicaid. In addition, individuals whose names are going to be placed or have been placed on the State's Central Registry for child abuse can request a hearing. In Human Services and HCPF cases, parties who are not satisfied with the county's or state official's decision have the right to request a hearing before the Division. Generally, the Division must hold a hearing within 90 days from the date of application. Depending on the type of case, the ALJ has between 20 and 60 days to issue a decision once the hearing is completed. Following the issuance of the ALJ's decision, agency representatives review the decision to evaluate its appropriateness. These agency representatives then issue a final agency decision, which affirms, reverses, or sends back the ALJ's decision. The final agency decision can be appealed first at the district court level and then to the Colorado Court of Appeals.

Regulatory Agencies

The Division also hears cases for the Department of Regulatory Agencies, which typically involve a dispute between a state licensing board and an individual holding or applying for a professional license. In some of these cases the licensing board is seeking a disciplinary action against a licensed individual. In other cases individuals bring actions against a board for not granting them a license. The licensing board or the individual may request a hearing before the Division if the matter cannot be settled among the parties. The Division must hold the hearing within 90 days from the date of application. The ALJ must then issue a decision within 60 days from the completion of the hearing. Similarly to Human Services

and HCPF, the respective licensing board reviews the ALJ's decision. On the basis of the review, the board issues a final agency decision that affirms, reverses, or sends back the ALJ's decision. The final agency decision can be appealed to the Colorado Court of Appeals.

Hearings Are Not Scheduled Within Required Time Frames

We found the Division did not hold hearings for its four major client agencies within the time requirements. Participants to our public perception survey commented on this issue in their survey responses. Although the participants rated the Division in the acceptable range for its timeliness of hearings, the average survey ratings were at the low end of that range. Many participants also wrote comments regarding time delays in scheduling hearings. This issue is discussed in more detail in Chapter 3.

The Workers' Compensation Act requires the Division to set hearings within 80 to 100 days after an application for hearing is submitted. In certain cases an ALJ may grant an extension of 60 days (e.g., permanent total disability is alleged). In all other cases an ALJ may grant a 20-day extension if "good cause" is shown.

We found the Division did not hold many of its workers' compensation hearings within the statutory time requirements. Sixty-three percent (913 out of 1,438 cases) of the hearings held in Fiscal Year 2000 were not held within the 100-day statutory time requirement. For some of these cases an ALJ may have granted the parties a 20- or 60-day continuance. However, due to a lack of information we were unable to determine how often this occurred. Therefore, we also looked at the number of hearings that exceeded the 120- and 160-day time requirements. We found that 24 percent (339 cases) of the hearings exceeded the 120-day time requirement and 10 percent (150 cases) exceeded the 160-day requirement.

The number of days from application to hearing ranged from 34 to 337. As the following table shows, the average number of days from application to hearing increased from 89.3 days in Fiscal Year 1996 to 112 days in Fiscal Year 2000. This is an increase of about 25 percent.

Scheduling of Workers' Compensation Hearings		
Fiscal Year	Average Number of Days From Application To Hearing	Percent Increase
1992	81.2	NA
1996	89.3	10.0%
2000	112.0	25.0%

Source: Office of the State Auditor's analysis of information provided by the Divisions of Administrative Hearings and Workers' Compensation.

The Division Held About 86 Percent of Other Agencies Hearings Within Time Requirements

In most cases the time requirement for the number of days from application to hearing for the other agencies is 90 days. Overall, we found the Division held about 86 percent (1,392 cases) of the hearings for Human Services, HCPF, and Regulatory Agencies within the required time limits.

We also determined the average number of days from application to hearing for each of the other agencies. As the following table shows, the average number of days from application to hearing for Regulatory Agencies exceeded the 90-day time requirement. The actual number of days from application to hearing ranged from 5 to 318 for the Human Services, HCPF, and Regulatory Agencies.

Scheduling of Other Agencies Hearings Fiscal Year 2000			
Agency	Average Number of Days From Application To Hearing	Range of Days	
		Low	High
Human Services	58	5	269
HCPF	51	16	318
Regulatory Agencies	95	22	247

Source: Office of the State Auditor's analysis of information provided by the Division of Administrative Hearings.

Untimely Hearings Can Have Many Negative Impacts

When the Division fails to conduct hearings in a timely manner, the parties involved can be negatively affected. For most Division of Workers' Compensation, Human Services, and HCPF cases, individuals request a hearing because they are not satisfied with the amount of benefits they have been granted or awarded. These individuals must wait until after the hearing to have their cases resolved and to determine the amount of benefits they will receive. Because many of the individuals involved in these types of cases have limited resources, delays in conducting hearings may have a significant impact on their financial and medical well-being. In addition, by not conducting hearings in a timely manner, the Division may prevent Human Services and HCPF from issuing final agency decisions within federal time requirements.

For Regulatory Agencies cases, untimely hearings can adversely affect the general public and the individuals involved in the cases. For example, in a Regulatory Agencies case involving a medical license, the physician may be allowed to continue to practice medicine. Until a decision is issued, the physician's actions that resulted in the accusations could continue. Conversely, a physician's business may be harmed in cases where the respective board wrongly suspended or revoked the license prior to the hearing.

Management's Decisions Have Caused Scheduling Issues

A lack of trained administrative staff contributed to many of the problems we identified related to the scheduling of hearings. Docketing staff are responsible for scheduling all hearing requests received by the Division. Over the past two years, however, the Division experienced an 81 percent turnover rate in administrative staff. During this time period 10 out of the Division's 12.4 administrative FTE left their positions. A large number of these staff members had been with the Division for many years and had extensive knowledge of their roles and responsibilities. We found that Division management did not promptly fill these vacancies. On average, management took 13 months to fill each of these positions. Management stated that they did not immediately fill these positions because they wanted to reduce Division costs to meet budget requirements. According to management, however, temporary employees were used to fill some of these positions. Additionally, we found the Division used the funding associated with three positions to pay the Division Director's salary during 1999. At the time of our audit these three positions were still vacant. In addition, when management hired new administrative staff, they did not provide adequate training on the responsibilities associated with the positions. Therefore, many new staff were unsure of their responsibilities and how to adequately fulfill them. Management's failure to immediately fill vacancies and properly train new staff led to a

large backlog in the docketing section. In addition to the staffing issues, we found that Division management have not routinely monitored the timeliness of hearings to ensure time requirements are met.

Recommendation No. 7:

The Division of Administrative Hearings should improve timeliness of hearings by:

- a. Providing training to support staff on how to schedule hearings.
- b. Clarifying support staff responsibilities with regard to scheduling hearings.
- c. Ensuring that all support staff positions are filled in a timely manner.
- d. Developing and implementing a plan to eliminate any backlogs in the scheduling process.
- e. Developing and implementing a system for periodically monitoring the timeliness of hearings.

Division of Administrative Hearings Response:

- a. Agree. The Division has begun a training program to expand support staff knowledge in how to schedule hearings in Human Services and Health Care Policy and Financing cases, and will expand those efforts in all cases.
 - b. Agree. The Division will develop written documentation that clarifies support staff responsibilities regarding scheduling hearings. Specific performance standards will be developed and implemented that track timeliness of scheduling hearings by support staff once they are fully trained in the processes.
 - c. Agree. The Division began filling vacant support staff positions in October 2000 and will continue to do so until all positions are filled.
 - d. Agree. The Division will develop and implement a plan to eliminate any backlogs in the scheduling process.
 - e. Agree. The Division will develop and implement a system for periodically monitoring the timeliness of hearings.
-

The Division Does Not Issue Decisions Within the Statutory Time Requirements

We found the Division does not issue decisions for its four major client agencies within the required time frames. In April 2000, House Bill 00-1180 was signed by the Governor. This Bill changed the time requirements for issuing workers' compensation administrative law decisions. The Division can no longer issue summary orders but is instead required to issue specific findings within 30 calendar days from the date of the hearing. Prior to the Bill's passage, the Division was required to issue summary orders within 15 working days after the date of the hearing. At the parties' request, the Division was required to issue specific findings within 25 working days after the date of request. Specific findings provide more detail on the ALJ's findings than the summary order.

Overall, we found that the Division's ALJs did not issue 26 percent (248 decisions) of their workers' compensation decisions within the required time frames in Fiscal Year 2000. The number of days from hearing to decision ranged from 1 to 133. As the following table shows, the average number of days from hearing to decision has increased about 75 percent since Fiscal Year 1996, from 7.5 working days in Fiscal Year 1996 to 13.1 working days in Fiscal Year 2000. Since the passage of House Bill 00-1180, the Division has taken an average of 31 calendar days to issue decisions. This average exceeds the statutory requirement by one day.

Timeliness of Workers' Compensation Decisions			
Time Period		Average Number of Days From Hearing To Decision	Percent Change From Prior Time Period
Fiscal Year 1992		9.6 Working Days	NA
Fiscal Year 1996		7.5 Working Days	-21.9%
Fiscal Year 2000	7/99 - 4/00	13.1 Working Days	74.7%
	5/00 - 6/00*	31 Calendar Days	NA
<p>Source: Office of the State Auditor's analysis of information provided by the Divisions of Administrative Hearings and Workers' Compensation. *This information reflects the changes made with HB 00-1180.</p>			

The following table reflects the average number of working days to issue a summary order for each ALJ during Fiscal Year 2000. The average number of working days to issue summary orders ranged from a low of 3 to a high of 49. Eight ALJs (38 percent) did not meet the 15-working-day requirement. In addition, the table shows the number of decisions issued by each ALJ that exceeded the statutory time requirements. A total of twenty-one ALJs heard workers' compensation cases for the Division during Fiscal Year 2000. Due to scheduling assignments, not all ALJs heard all types of cases during the year. Some contract ALJs only heard certain types of cases. We assigned a random number to each ALJ that is used in the tables throughout this report.

Timeliness of ALJ Workers' Compensation Decisions			
ALJ ID #	Average Number of Working Days to Issue Summary Orders (15-working-day requirement)	Decisions Not Meeting Time Requirements	
		Number	Percentage of Total Issued by ALJ
17	3	2	2.6%
14	7	6	11.8%
20	7	11	9.7%
2	7	5	9.4%
3	10	4	21.1%
12	11	9	18.0%
21	11	0	0.0%
13	12	9	25.7%
9	13	3	15.0%
16	13	10	7.1%
8	14	2	25.0%
10	15	9	64.3%
18	15	18	30.0%
5	16	14	31.8%
7	18	9	37.5%
1	18	38	56.7%
15	18	25	47.2%
6	21	24	60.0%
19	21	7	30.0%
4	25	34	75.6%
11	49	9	81.8%

Source: Office of the State Auditor's analysis of information provided by the Divisions of Administrative Hearings and Workers' Compensation.

Note: This table does not include data on decisions issued after the passage of HB 00-1180 because the data are not available for individual ALJs.

Note: A total of 21 ALJs issued workers' compensation decisions in Fiscal Year 2000.

The Division Issued About 90 Percent of Other Agencies Decisions Within Time Requirements

As we discussed at the beginning of this chapter, the Division's time requirements for issuing decisions for the other agencies varies depending on the type of case. These time requirements may be established by federal or state law, the Colorado Code of Regulations, or Division policy. The following table shows the time requirements for Human Services, HCPF, and Regulatory Agencies. For Human Services and HCPF cases we used the 60-day time requirement for analysis because the data provided by the Division did not specify case type, but only that it was a Human Services or HCPF case.

Time Limits for Other Agencies Decisions Fiscal Year 2000		
Agency	Case Type	Required Number of Days From Hearing To Decision
Human Services	Food Stamps - Benefits	20
	Public Assistance*	20
	Foster and Day Care	60
	Subsidized Adoption	60
	Central Registry	60
HCPF	Medicaid - Recipient Appeals	20
	Medicaid - Provider Appeals	60
Regulatory Agencies	All types	60
<p>Source: Office of the State Auditor's analysis of federal and state law, Colorado Code of Regulations, and Division of Administrative Hearings policy. *Public Assistance consists of cases such as Colorado Works, Old Age Pension, Aid to Needy Disabled, and Low Income Energy Assistance.</p>		

Overall, we found that the Division's ALJs issued about 90 percent (668 decisions) of their decisions for other agencies within the required time limits. As the following table shows, the number of days from hearing to decision ranged from 1 to 249 for the various agencies.

Timeliness of Other Agencies Decisions Fiscal Year 2000			
Agency	Average Number of Working Days From Hearing To Decision	Range of Days	
		Low	High
Human Services	24	1	249
HCPF	28	1	231
Regulatory Agencies	48	1	162
Source: Office of the State Auditor's analysis of information provided by the Division of Administrative Hearings.			

The following table reflects the average number of working days from hearing to decision for each ALJ during Fiscal Year 2000. The average number of working days to issue a decision ranged from a low of 6 to a high of 88. Two ALJs (10 percent) did not meet the 60-working-day requirement for issuing decisions.

Timeliness of ALJ Decisions for Other Agencies			
ALJ ID #	Average Number of Working Days to Decisions	Decisions Not Meeting Time Requirements	
		Number	Percentage of Total Issued by ALJ
23	6	0	0.0%
9	6	0	0.0%
22	6	0	0.0%
14	12	1	1.6%
3	19	1	7.7%
17	21	2	3.8%
1	22	1	10.0%
19	22	2	9.1%
5	22	1	5.6%
16	22	0	0.0%
18	25	6	9.5%
12	25	2	10.0%
2	26	3	23.1%
13	32	3	16.7%
6	33	2	11.1%
4	34	5	16.7%
7	36	5	14.7%
20	38	2	15.4%
15	38	3	17.6%
8	69	1	33.3%
11	88	5	62.5%

Source: Office of the State Auditor's analysis of information provided by the Division of Administrative Hearings.

Note: A total of 21 ALJs issued other agency decisions during Fiscal Year 2000.

Untimely Decisions Are a Result of Management's Actions

The Division's failure to issue decisions in a timely manner can negatively affect the parties involved. As discussed in Chapter 3, public perception survey participants rated the Division's timeliness of decisions the lowest of all the survey factors. Although the overall average rating for this factor was at the low end of the acceptable range, survey participants from three of the Division's four largest client agencies rated the Division's timeliness in issuing decisions as unacceptable.

As mentioned previously, individuals involved in most Division of Workers' Compensation, Human Services, and HCPF cases must wait until a decision is issued to have their case resolved and to determine the amount of benefits they will receive. Because many of the individuals involved in these cases have limited resources, delays in issuing decisions may have a significant impact on their financial and medical well-being. For Regulatory Agencies cases where the individual has been wrongly accused, that person's business or employment opportunities may be jeopardized. In addition, when the Division's ALJs do not issue timely decisions, they prevent Human Services and HCPF from issuing final agency decisions within federal time requirements.

As discussed later in this chapter, management's decisions related to workload distribution adversely affected the timeliness of decisions. From February to June 2000, Division management decided to temporarily suspend full rotation and assign six ALJs strictly to Human Services and HCPF cases due to budget issues. During this time, however, the Division did not reduce the number of workers' compensation hearings it scheduled. Therefore, the workers' compensation workload for the ALJs who continued to hear these cases increased significantly. Because of the increased workload, the ALJs were unable to meet time requirements for issuing decisions. As a result, these ALJs developed a backlog of cases waiting for decisions to be completed.

We believe the Presiding Judge could have helped to manage and reduce this backlog. According to the Presiding Judge, he began actively monitoring the timeliness of the ALJs' decisions during the last few months of Fiscal Year 2000. We believe, however, that he should have begun monitoring timeliness when the workload changes were made. This could have prevented the backlog in cases waiting for a decision to be issued. In addition, the Presiding Judge should have spent less time on Division wide administrative tasks and more time on the direct supervision of the ALJs and on hearing cases.

Recommendation No. 8:

The Division of Administrative Hearings should improve timeliness in issuing decisions by:

- a. Evaluating the current docketing system to determine if changes are needed in the number of hearings scheduled for each ALJ.
- b. Developing and implementing a plan to eliminate any backlogs resulting from scheduling problems.
- c. Continuing to routinely monitor the timeliness of decisions to ensure time requirements are being met.
- d. Reinstating timeliness of decisions as a factor on ALJ performance evaluations.
- e. Revising the Presiding Judge's responsibilities so that more time is spent on administrative duties directly related to the supervision of the ALJs and on hearing cases.

Division of Administrative Hearings Response:

- a. Agree. The Division has already begun meeting with judges and docket staff to discuss methods of more equitable distribution of workload to ensure that all decisions are issued timely.
- b. Agree. The Division has implemented a plan to eliminate backlogs resulting from scheduling problems. This plan was developed with input from judges, docket staff, client agencies, and user groups. The goal of this plan is to eliminate the backlog of decisions by May 2001.
- c. Agree. The Division will continue to monitor the timeliness of decisions to ensure time requirements are being met.
- d. Agree. The Division will reinstate timeliness of decisions as a factor on ALJ performance plans during the Spring 2001.

- e. Agree. Once a new Division Director is hired and is familiar with Division activities, the Division will review not only the Presiding Judge's responsibilities, but the functions and duties of all key positions as well.

Changes in Workload Distribution Have Resulted in Inefficiencies

As discussed in the Description section, the Department of Personnel/GSS reorganized the Division following its 1998 management review. As part of the reorganization, the Division implemented the full rotation of ALJs. Before the reorganization Division management permanently assigned ALJs to specific subject matters, such as workers' compensation or Human Services/HCPF cases. Upon the Division's initial implementation of rotation, ALJs heard all types of cases. Management no longer assigned ALJs to specific subject matters. In February 2000, however, management abandoned full rotation and assigned ALJs to specific subject matters due to budget constraints.

During our review of the Division and its reorganization, we found that efficiency has not increased as a result of the changes. As discussed in the next sections, management's approach to implementing rotation resulted in inappropriate and inequitable workload distribution, problems with timeliness of decisions, and increased costs.

The Number of Workers' Compensation Hearings Has Decreased

Workers' compensation hearings are formal legal proceedings in which all parties may present evidence, including documents and sworn testimony of witnesses. A hearing provides a formal way to decide workers' compensation claim disputes that arise between employees, insurance carriers, and employers. Such disputes usually involve issues of liability, insurance coverage, and benefits. Most parties to workers' compensation hearings are represented by an attorney.

The Division conducts two types of workers' compensation hearings:

- c. **Merit Hearings** are hearings in which witnesses are sworn in and testimony is taken. These hearings are the longer of the two types. Merit hearings take, on average, 2.6 hours and result in one or more merit decisions. Merit hearings require an application by one of the parties.

- C **Procedural Hearings** are hearings for procedural matters in which no witnesses are sworn. These are usually brief and include such matters as motions to continue. Procedural hearings take an average of 7 minutes and result in one or more procedural decisions. Procedural hearings do not require a separate hearing application.

The Division reported that it held a total of 2,865 workers' compensation hearings in Fiscal Year 2000, a decrease of about 50 percent from Fiscal Year 1996. In our 1997 audit we reported a similar decrease in the number of hearings held by the Division. As discussed in Chapter 4, Division management attribute this decrease to an increase in case complexity. According to management, multiple issues are now included in a single hearing rather than holding separate hearings for each issue. The Division, however, could not provide us with documentation to support this claim. The following table compares the number of cases docketed, hearings held, and decisions issued in Fiscal Years 1996 and 2000.

Workers' Compensation Hearings			
	Fiscal Year 1996	Fiscal Year 2000	Percent Change
Cases Docketed	11,426	12,039	5.4%
Hearings Held	5,682	2,865	-49.6%
Merit	2,117	1,325	-37.4%
Procedural	3,565	1,540	-56.8%
Decisions Issued	11,680	11,866	1.6%
Merit	4,246	2,099	-50.6%
Procedural	7,434	9,767	31.4%
Source: Division of Administrative Hearings data.			

The number of workers' compensation hearings held by each ALJ in Fiscal Year 2000 varied greatly. In addition to management's decisions related to workload distribution, there are other reasons for this disparity. Specifically, some ALJs worked for the Division on a contract basis and only heard a limited number of cases. Other ALJs heard a smaller number of cases because they were not employed at the Division for the entire year. As the following table shows, the number of hearings held by each ALJ ranged from 15 to 280.

Workers' Compensation Workload by ALJ		
ALJ ID #	Number of Hearings	Percent of Total Workers' Compensation Hearings
8	15	0.7%
10	25	1.1%
21	36	1.6%
9	39	1.8%
11	42	1.9%
19	59	2.7%
3	63	2.8%
7	64	2.9%
4	88	4.0%
14	95	4.3%
13	97	4.4%
18	102	4.6%
17	116	5.2%
2	121	5.4%
15	128	5.8%
12	128	5.8%
6	130	5.8%
5	145	6.5%
1	219	9.8%
16	232	10.4%
20	280	12.6%

Source: Office of the State Auditor's analysis of Division of Administrative Hearings data.

Note: A total of 21 ALJs heard workers' compensation cases during Fiscal Year 2000.

Number of Other Agencies Hearings Held by Each ALJ Varies Greatly

The Division reported that it held a total of 907 other agency hearings in Fiscal Year 2000, of which 97 percent were merit hearings. During this same time period the Division issued 2,144 decisions. The following table shows the number of cases docketed, hearings held, and decisions issued by the Division for the other agencies in Fiscal Year 2000. We do not have comparative data from previous years.

Other Agencies Hearings Fiscal Year 2000					
	Human Services	HCPF	Regulatory Agencies	Other*	Total
Cases Docketed	909	413	177	110	1,609
Hearings Held	582	239	32	54	907
Merit	569	233	30	50	882
Procedural	13	6	2	4	25
Decisions Issued	1,424	532	137	51	2,144
Merit	968	391	44	19	1,422
Procedural	456	141	93	32	722
Source: Division of Administrative Hearings data. * "Other" includes the Departments of State, Education, and Public Health and Environment.					

As with workers' compensation, the number of other agencies hearings held by each ALJ during Fiscal Year 2000 varied greatly. The reasons for this disparity are the same as those listed for workers' compensation. The following table shows the number of hearings held by each ALJ for each of the other agencies.

Other Agencies Workload by ALJ					
ALJ ID #	Number of Hearings				Percent of Total Other Hearings
	Human Services	HCPF	Regulatory Agencies	Other ¹	
23	0	1	0	0	0.1%
22	0	0	2	2	0.4%
8	3	3	1	0	0.7%
11	6	7	0	0	1.4%
3	8	7	6	0	2.2%
9	10	10	0	0	2.1%
1	13	10	1	0	2.5%
2	14	7	13	1	3.6%
20	18	8	12	3	4.3%
13	19	12	15	3	5.1%
16	20	9	0	0	3.0%
12	24	10	10	2	4.8%
19	26	15	0	2	4.5%
15	27	11	11	4	5.5%
7	27	13	10	1	5.3%
5	30	8	8	4	5.2%
6	46	13	4	3	6.9%
4	51	12	1	1	6.8%
17	76	22	4	2	10.8%
14	79	42	7	0	13.3%
18	81	29	1	0	11.6%

Source: Office of the State Auditor's analysis of Division of Administrative Hearings data.
¹"Other" includes the Departments of State, Education, and Public Health and Environment.
Note: A total of 21 ALJs heard other agency cases during Fiscal Year 2000.

Workers' Compensation Docket Days Have Increased

In addition to the number of hearings held and decisions issued, another way to measure workload is to look at the total number of docket days scheduled during the year. In Fiscal Year 2000 the Division scheduled a total of 2,158 docket days. Since Fiscal Year 1996 the average number of workers' compensation docket days scheduled per month has risen from 70 days to 112 days, an increase of 60 percent. As discussed later in this chapter, this is due to management's decision to increase the number of days each week hearings are scheduled. As the following table shows, workers' compensation accounted for over 62 percent of the total days docketed for the Division in Fiscal Year 2000. During this same time period the Division of Workers' Compensation accounted for only 50 percent of the Division's budget.

Subject-Matter Workload Comparison by Docket Days Fiscal Year 2000				
	Workers' Compensation	Human Services/ HCPF	Regulatory Agencies/ Other	Total
Docket Days	1,346	538	274	2,158
Percent of Total Docket Days	62.4%	24.9%	12.7%	100.0%
Source: Office of the State Auditor's analysis of Division of Administrative Hearings data.				

We also reviewed and evaluated the total number of docket days scheduled for each ALJ during Fiscal Year 2000. We combined all docket days assigned to the ALJs, regardless of the case type. We used this methodology because we wanted to determine each ALJ's total workload. The Division scheduled each ALJ an average of 11.3 docket days per month. As the following table shows, the number of docket days scheduled for each ALJ per month ranged from 3.2 to 14.2 per FTE. Generally, we found that part-time ALJs were docketed for more days than full-time ALJs.

ALJ Docket Days	
ALJ ID #	Average Monthly Docket Days
22	3.2
10	5.6
11	5.8
21	7.0
9	10.0
8	10.0
18	10.3
12	10.4
4	10.4
16	10.9
17	11.0
14	11.0
5	11.3
2	11.6
6	11.7
20	11.9
23	12.0
15	12.2
7	12.6
1	12.7
3	12.8
13	13.1
19	14.2

Source: Office of the State Auditor's analysis of Division of Administrative Hearings data.

Note: For comparison purposes, we adjusted our calculations so that the average number of days for each ALJ reflects a full-time schedule. This is because some ALJs work part-time.

Note: A total of 23 ALJs heard cases in Fiscal Year 2000.

For workers' compensation specifically, the number of docket days scheduled for each ALJ has also increased since Fiscal Year 1996. In Fiscal Year 1996 the Division scheduled approximately 70 docket days per month for the 8.7 FTE assigned to workers' compensation hearings. Therefore, the Division scheduled each ALJ an average of 8 workers' compensation docket days per month. In Fiscal Year 2000, however, the 21 ALJs who heard workers' compensation cases were scheduled an average of 11.3 docket days per month. This is a 41 percent increase in the number of workers' compensation docket days scheduled for each ALJ. At the same time, the number of workers' compensation merit hearings held each docket day has decreased 66 percent since Fiscal Year 1996. In Fiscal Year 2000 the Division held one merit hearing per docket day compared with almost three merit hearings per docket day in Fiscal Year 1996.

Workload Changes Resulted in Poor Customer Service and Increased Costs

Division management's decisions regarding workload assignments primarily contributed to the problems identified earlier in this chapter related to untimely decisions. Because of the heavy docket schedule for many ALJs, they were unable to complete their decisions in a timely manner. For example, the ALJ with the highest average number of docket days per month (14.2 docket days per month) was scheduled on the bench 70 percent of her time. That left only 30 percent of her time each month to complete decisions. According to the ALJs, for every day spent in hearing, one to two days of non-hearing time is generally needed to complete and issue decisions. With the heavy workload assigned to many of the ALJs, it was impossible for them to issue their decisions within the time requirements. As a result, the Division's customer service decreased significantly. Many of the responses to our public perception survey (discussed in Chapter 3) indicated the public's dissatisfaction with the timeliness of the Division's decisions. As mentioned in Chapter 1, the ALJs assigned to workers' compensation cases from February to June 2000 tended to have the heaviest workloads. Many of the ALJs assigned to Human Services/HCPF cases stated they did not have enough work to keep them busy. They would "create" work that could be billed to Human Services.

In addition to customer service problems, the workload changes also resulted in increased costs for some client agencies. The number of hours spent on workers' compensation activities increased by 19 percent, or 3,262 hours, since Fiscal Year 1999. Applying the Fiscal Year 2000 ALJ hourly billing rate of \$103.82, Division costs increased by about \$340,000 over this one-year time period. Improved workload management could help to reduce Division costs.

The Division's Docketing Process Has Caused Many Problems

The Division's reorganization included changes in its docketing process. Prior to the reorganization the Division scheduled workers' compensation hearings on Tuesdays, Wednesdays, and Thursdays. Mondays and Fridays were used to reschedule hearings that had been continued due to lack of time. After the reorganization, in an attempt to improve customer service, management decided to schedule workers' compensation hearings on Monday through Thursday. Although these changes increased the number of days hearings were scheduled, it also contributed to a 75 percent increase in the time ALJs took to issue decisions.

Another factor affecting workload and the docketing process was the implementation of the backup judge system. Because of the nature of the judicial process, many cases that are scheduled for hearing settle before the actual hearing date. When this occurs and the Division is not notified, the courtroom assigned to the case will be left vacant and the ALJ's services will not be utilized. Because of this practice, the Division schedules multiple hearings for the same ALJ at the same time. As part of the reorganization, the Division implemented the backup judge system as a way of ensuring that a case scheduled for hearing would not be "bumped" to another day. Under this system, each day management assigned a specific ALJ backup judge duties. This ALJ was then called upon to hear any cases that were not specifically assigned to another judge.

Although the backup judge system was implemented as a means of improving customer service, Division management did not fully consider the workload implications associated with the system. Docketing staff use a formula to determine the number of days every ALJ should be docketed each month. This formula, however, did not consider the days an ALJ was assigned backup judge duty. Therefore, ALJs were often assigned backup judge duty in addition to their full regular workload. This practice also reduced the amount of time ALJs had to complete decisions. As a result, the timeliness of decisions was impacted.

Finally, workload changes resulting from the subject-matter rotation of the ALJs also affected the efficiency and cost-effectiveness of services provided by the Division. The Division implemented rotation without a clear and defined plan for applying it and for measuring its effectiveness. In February 2000 Division management realized that workers' compensation costs had increased as a result of rotation. At the same time, the Division had not billed Human Services enough to cover the Division's expenses. As a result, management decided to temporarily suspend subject-matter rotation and assign ALJs to specific subject matters. As previously mentioned, the workload for ALJs assigned to

workers' compensation became unmanageable, while many of the ALJs assigned to Human Services and HCPF cases did not have enough work to keep them busy.

Although the ALJs' knowledge of other subject matters has increased since the reorganization, the Division's efficiency and cost-effectiveness has decreased. The Division needs to evaluate its docketing process and determine what changes are necessary to increase efficiency and customer service, and at the same time decrease costs.

Recommendation No. 9:

The Division of Administrative Hearings should improve how it assigns cases and schedules hearings for ALJs by:

- a. Developing and implementing a clear and defined plan for applying subject-matter rotation and for measuring its effectiveness. This may include implementing rotation on a 6- to 12- month cycle.
- b. Modifying its docketing process to ensure docket days are appropriately distributed among ALJs. This may include decreasing the number of docket days workers' compensation hearings are scheduled.
- c. Providing training to docketing staff on the modifications made to the docketing process.

Division of Administrative Hearings Response:

- a. Agree. The Division will develop and implement a clear and defined rotation plan, including measurement factors to evaluate its effectiveness.
- b. Agree. The Division began modifying its docketing process in November 2000 to ensure docket days are appropriately distributed among ALJs. The Division now uses data obtained from prior months' actual hearing numbers to determine future docket days for each individual ALJ. The number of decisions each judge has pending is also taken into account when assigning future dockets to ensure that a balance is struck between timely hearings and timely decisions.
- c. Agree. The Division trains the docket staff on modifications to the docket process as modifications are implemented; however, the training is usually

verbal and does not always include written instructions. The Division will begin including written instructions for any training that is required when modifications to the docketing process occur.

The Division Should Explore Options for Recording Hearings

The Division primarily uses court reporters to record workers' compensation hearings. For Fiscal Year 2000 the Division was appropriated \$300,000 and 5.3 FTE for court reporters. The Division employed a total of six court reporters, four in Denver, one in Colorado Springs, and one in Grand Junction. Most of these reporters were less than full-time state employees. These reporters are responsible for recording the hearings as well as producing written transcripts when requested by the parties. The court reporters' salaries are based upon the time they spend in the courtroom recording hearings. Preparation of transcripts, however, is completed on the court reporters' own time. The Division does not pay for this service. Instead, the party requesting the transcript pays the reporter directly for the transcript. State statute requires that transcripts for workers' compensation hearings be completed within 25 working days from the date of request.

We found that court reporters did not complete workers' compensation transcripts within the statutory time requirements. Specifically, nearly 90 percent of the transcripts requested in Fiscal Year 2000 were not completed within the required time limits. As of July 20, 2000, court reporters had completed 133 (32 percent) of the 413 transcripts requested during Fiscal Year 2000. The remaining transcripts (280) were still pending completion as of this date. On average, court reporters took 110 working days to complete the transcripts requested in Fiscal Year 2000. It is likely that this average is much higher because almost 70 percent of the transcripts requested were not completed at the time of our audit.

The Division's docketing approach greatly contributed to the untimely completion of transcripts. As mentioned earlier, the Division increased the number of docket days that the ALJs were scheduled. This increase also affected the court reporters. Previously, the Division scheduled court reporters assigned to the Denver docket an average of 12 hearing days per month or 3 hearing days per week. In Fiscal Year 2000 the Division docketed these court reporters an average of 17 hearing days per month, or more than 4 days per week. This is an increase of more than 40 percent. Because of the increased workload and the number of docket days scheduled, the court reporters had less time available to complete transcripts. In addition, the number of transcript requests received by the

Division increased 83 percent from Fiscal Year 1996 to Fiscal Year 2000. As a result, the court reporters were not able to keep up with their workload and complete transcripts within the time requirements. Finally, the increased workload led to a higher turnover of reporters as well as multiple work-related injuries.

The Division Needs to Improve the Quality of Its Tape Recording Equipment

Over the past fiscal year the Division began using audio equipment to record some workers' compensation hearings in order to relieve the court reporters' workload. The Division has always tape recorded Human Services and HCPF hearings. We found that most of the Division's audio equipment consists of basic, portable tape recorders. This equipment often produced poor recordings of the hearings. Human Services and HCPF representatives have expressed concerns to the Division about the quality of audio recordings. Many of the transcripts produced from these recordings had a number of sections that were "inaudible." The agencies have returned ALJ decisions to the Division because important information from these recordings was inaudible. Workers' Compensation stakeholders also stated that they have had similar experiences with the Division's tape-recorded hearings.

Providing adequate recording equipment would require a significant capital investment. This investment, however, could produce savings to the extent that fewer court reporters would be needed. As the following table shows, we estimate the Division could save more than \$400,000 over a three-year period if it reduced the number of hearings recorded by court reporters. In the table the "court reporters salaries" under the current approach represent the Division's costs for six court reporters. The alternative approach is based on the Division's using court reporters for three courtrooms and a digital recording system for three other courtrooms.

Options for Recording Hearings Three-Year Cost Comparison					
Year	Current Approach	Alternative Approach			Cost Savings
	Court Reporter Salaries¹	Court Reporter Salaries¹	Digital Recording System²	Total	
Year 1	\$278,556	\$139,278	\$27,260	\$166,538	\$112,018
Year 2	\$286,913	\$143,456	\$260	\$143,716	\$143,197
Year 3	\$295,520	\$147,760	\$260	\$148,020	\$147,500
Total	\$860,989	\$430,494	\$27,780	\$458,274	\$402,715

Source: Office of the State Auditor's analysis of Division of Administrative Hearings data and audio equipment cost estimates.

¹For analysis purposes, we increased court reporter salaries 3 percent each year.

²The first-year figure includes the costs of three digital recording systems at \$9,000 each. In addition, for all three years we included the cost of compact discs to record the hearings.

Because of the numerous problems identified with court reporters and audio equipment, the Division needs to explore options to improve the delivery of these services. The Division should assess the costs and benefits of increasing the number of hearings documented by tape recordings as opposed to documentation by court reporters.

Recommendation No. 10:

The Division of Administrative Hearings should assess the costs and benefits to determine if it should primarily rely on court reporters or a tape recording system to document hearing activities.

- If the decision is made to rely on a tape recording system, the Division needs to purchase quality recording equipment that will provide a reliable record.
- If the decision is made to rely on court reporters, the Division needs to ensure there is an adequate number of reporters to cover the hearings and to complete transcripts within the statutory time requirements.

Division of Administrative Hearings Response:

Agree. The Division will assess the costs and benefits of using tape recordings rather than live court reporters for its workers' compensation hearings and will, based on that assessment, make the appropriate decisions regarding whether to use tapes or live court reporters for its hearings.

Reversal Rates for ALJ Workers' Compensation Decisions Continue to Rise

In Fiscal Year 2000, 331 ALJ workers' compensation decisions were appealed to the Industrial Claim Appeals Panel (ICAP) and 44 to the Court of Appeals. ICAP reversed 65 ALJ decisions (20 percent). The Court of Appeals reversed four ICAP decisions (9 percent), all of which affirmed the original ALJ order. As the following table shows, the percentage of decisions reversed on appeal in Fiscal Year 2000 increased since our 1992 and 1997 audits.

Comparison of ALJ Workers' Compensation Decisions That Were Appealed			
Appeal and Reversal Data	1992 Audit	1997 Audit	FY 2000
Decisions appealed to ICAP:			
Appeals	1,152	464	331
Reversals	184	81	65
Percent Reversed	16%	17%	20%
Decisions appealed to Court of Appeals:			
Appeals	326	137	44
Reversals	11	9	4
Percent Reversed	3%	7%	9%
Decisions appealed overall:			
Appeals	1,478	601	375
Reversals	195	90	69
Percent Reversed	13%	15%	18%
Source: Office of the State Auditor's analysis of workers' compensation appealed decisions.			

Thirty-five of the 65 cases (54 percent) reversed by ICAP had initially been decided in favor of claimants, but were reversed in favor of respondents. The other 30 had been decided by the ALJs in favor of the respondents but were reversed in favor of claimants. In the 1997 audit, reversals were evenly split between claimants and respondents.

Reversal Rates for Other Agencies Decisions Are Much Lower Than Workers' Compensation

In addition to workers' compensation reversals, we also reviewed reversal rates for Human Services, HCPF, and Regulatory Agencies decisions. As mentioned previously, the appeals process for these agencies differs from workers' compensation. Specifically, representatives from these agencies review ALJ decisions related to their cases. These representatives then issue final agency decisions, which affirm, reverse, or send back the ALJ's decision. If the parties involved in these cases are not satisfied with the final agency decision, they have the right to appeal the decision at the district court level and/or the Colorado Court of Appeals. We found the ALJ reversal rates for these agencies were much lower than the reversal rate for workers' compensation decisions. As the following table shows, the overall reversal rate for all three agencies was 1.7 percent.

ALJ Reversal Rate for Other Agencies Fiscal Year 2000			
Agency	Total Number of Decisions Issued	Number of Decisions Reversed	Percent of Decisions Reversed
Human Services	946	13	1.4%
HCPF	328	10	3.1%
Regulatory Agencies	47	0	0.0%
TOTAL	1,321	23	1.7%
Source: Office of the State Auditor's analysis of final agency decision data for Human Services, HCPF, and Regulatory Agencies.			

We also found that 78 percent of reversed Human Services decisions and 67 percent of the reversed HCPF decisions initially favored the individuals. The final agency decisions for these cases favored the state agency.

Reversal Rates Varied for ALJs

We analyzed workers' compensation reversal rates for individual ALJs in Fiscal Year 2000 and compared them with the reversal rates found in the 1997 audit. The Fiscal Year 2000 rates ranged from a low of 0 percent to a high of 36.4 percent, compared with the rates in the 1997 audit, which ranged from a low of 2.2 percent to a high of 6.3 percent. In addition, we found that reversal rates for former workers' compensation ALJs have increased since the 1997 audit.

The number of workers' compensation hearings held by each ALJ varied considerably due to management's decision to temporarily suspend rotation during the second half of the fiscal year. The number of merit hearings held by the individual ALJs in Fiscal Year 2000 ranged from a low of 9 to a high of 200. Generally, the former workers' compensation ALJs with the higher reversal rates heard very few cases in Fiscal Year 2000. The following table compares ALJ reversal rates for Fiscal Year 2000 with reversal rates at the time of the 1997 audit.

ALJ Workers' Compensation Reversal Rates		
ALJ ID #	1997 Audit	Fiscal Year 2000
7	NA	0.0%
21	NA	0.0%
2	NA	0.0%
11	NA	0.0%
10	NA	0.0%
1	NA	0.9%
15	NA	1.0%
5	NA	1.2%
12	NA	1.2%
6	NA	1.5%
18	2.4%	3.2%
19	3.0%	3.3%
16	5.0%	4.0%
20	2.2%	4.2%
13	NA	4.8%
17	6.2%	6.6%
4	4.2%	10.2%
14	2.7%	10.7%
8	NA	11.1%
3	5.9%	20.6%
9	6.3%	36.4%

Source: Office of the State Auditor's analysis of workers' compensation appeal and reversal data.

Note: "NA" means the ALJ did not hear workers' compensation cases at the time of the 1997 audit, because they were either assigned to other subject matters at that time or because they were not employed by the Division at that time.

Note: A total of 21 ALJs heard workers' compensation cases during Fiscal Year 2000.

Although we do not have comparable information from 1997 for the other agencies, we evaluated the reversal rates for individual ALJs for these agencies for Fiscal Year 2000. As the following table shows, reversal rates for each ALJ ranged from a low of 0 percent to a high of 18.2 percent.

Other Agencies Reversal Rates by ALJ Fiscal Year 2000			
ALJ ID #	Human Services	HCPF	Regulatory Agencies
13	0.0%	0.0%	0.0%
9	0.0%	0.0%	0.0%
17	0.0%	0.0%	0.0%
20	0.0%	0.0%	0.0%
16	0.0%	0.0%	NA
8	0.0%	0.0%	0.0%
1	0.0%	0.0%	NA
2	0.0%	0.0%	0.0%
11	0.0%	NA	NA
22	0.0%	NA	NA
5	0.0%	14.3%	0.0%
3	0.0%	18.2%	0.0%
4	1.5%	0.0%	0.0%
6	1.6%	0.0%	0.0%
18	1.7%	0.0%	0.0%
19	2.0%	0.0%	0.0%
23	2.0%	5.0%	0.0%
7	2.0%	16.0%	0.0%
12	2.5%	0.0%	NA
14	2.9%	1.9%	0.0%
15	4.3%	6.7%	0.0%

Source: Office of the State Auditor's analysis of final agency decision data for Human Services, HCPF, and Regulatory Agencies.

Note: "NA" means the ALJ did not hear any of these types of cases in Fiscal Year 2000.

Note: A total of 21 ALJs heard other agencies cases during Fiscal Year 2000.

Appeal and Reversal Data Can Be a Valuable Management Tool

In both the 1992 and 1997 audits, we reported that appeal and reversal data could be useful to Division management and state policymakers. In the 1997 audit we specifically recommended that the Division collect appeal and reversal data and use the information as a management tool for ALJ performance evaluations. Division management have included reversal rates in ALJ performance evaluations and have stated that reversal decisions are analyzed to identify trends or common reversal reasons.

Division managers have also stated that over the past two years they have placed greater emphasis on improving the quality of ALJ decisions. Prior to the passage of House Bill 00-1180 in April 2000, which requires ALJs to issue specific findings for all decisions, Division management implemented a requirement that ALJs issue more detailed orders. In addition, orders are often reviewed by either the Presiding ALJ or other experienced ALJs before being issued. The Division should continue to review reversal data and use this information to improve the quality of ALJ decisions.

Recommendation No. 11:

The Division of Administrative Hearings should seek to lower reversal rates by:

- a. Continuing to analyze reversal decisions to determine if there are trends and common reasons for reversals.
- b. Providing training to ALJs related to common reversal reasons identified.
- c. Continuing to emphasize appeals and reversals in the performance evaluations for ALJs.

Division of Administrative Hearings Response:

- a. Agree. The Division will continue to analyze reversal decisions to determine if there are trends and common reasons for reversals.
- b. Agree. The Division will continue to provide training to ALJs related to common reversal reasons identified.

-
- c. Agree. The Division will continue to emphasize appeals and reversals in performance evaluations.
-

The Division Needs to Improve Its Documentation Management

The Division's docketing and support staff are responsible for issuing and maintaining documentation related to hearings. Staff must perform a variety of duties to fulfill this requirement, such as preparing the necessary documents for issuing, continuing, and withdrawing notices; inputting information related to hearings in the appropriate databases; filing documents in case files; and forwarding information to ALJs. It is important that documentation related to hearings is accurate, timely, complete, and available. This is necessary for ensuring that hearings and customer service are of high quality.

The Division uses two databases to manage documentation related to hearings—one for workers' compensation cases and another for all other case types. The workers' compensation database belongs to and is maintained by the Division of Workers' Compensation. However, both divisions are responsible for inputting and maintaining information pertaining to their involvement in the workers' compensation hearings process. The Division's own Case Tracking System is the second database and it contains case-related information for all other types of hearings.

During the audit we identified a number of problems with documentation issued and maintained by the Division. The Division's ALJs and support staff as well as parties involved in the hearings process cited several concerns regarding documentation. These concerns related to the completeness and accuracy of information contained in the actual case files and in the databases. In addition, during the audit, we observed several instances where documentation was not available, complete, or accurate. Specifically:

- **Parties do not always receive hearing notices in a timely manner or at all.** As discussed in Chapter 3, some public perception survey participants specifically identified problems with receiving notices. For instance, one survey participant wrote:

I am having a problem with the scheduling staff sending the notice of hearing to another county and not to the address on the request. The last two or three hearings have been rescheduled due to this problem. I currently have requested two hearings, one was mailed in June and

the other July 7th and the notice of hearings have not been received as of this date (August 2000). The staff need to pay attention to the address on the request and mail the notice of hearing to the correct county.

- **Notices, motions, and other important documents related to the cases and hearings are not always being forwarded to the appropriate ALJ or placed in the correct file.** Survey participants as well as Division staff stated many documents are lost by docketing staff. A survey participant wrote, "One has little confidence that one's filings are being forwarded to an actual judge for consideration or even making it to the correct file." In addition, three ALJs said they encountered situations where files were missing or important documents were not in the file when they were conducting hearings. We observed similar situations in several hearings. In one hearing, one of the parties informed the ALJ that he had filed a motion with the Division to continue the hearing at a later date. Although the parties involved had copies of this motion, the ALJ did not have a copy in his file.
- **Information maintained in the Division's databases is incomplete.** During the audit, we identified multiple cases in which data were absent in the databases. For example, we attempted to obtain information on workers' compensation orders from the workers' compensation database. In many cases we were unable to locate this information. Further review showed that orders were prepared for these cases, but the information had not been entered into the database. The Division of Administrative Hearings is responsible for inputting this information in the database. Such information is important in tracking decision outcomes.
- **Information in the databases is often inaccurate.** For example, we identified 159 data entry errors in the Division's Case Tracking System. Specifically, the hearing dates entered in the system were later than the decision dates. Such errors make it difficult for management to track the timeliness of hearings and decisions. In addition, we found problems with the docketing schedules for Fiscal Year 2000. For instance, we questioned the accuracy of one month's docketing schedule because the cases listed for this month were identical to those listed in another month's schedule. We found that management and staff do not periodically review data entered into the databases to ensure accuracy and completeness.

These documentation problems have negatively impacted the overall operations of the hearings process. ALJs informed us that in some instances parties do not show up for a

hearing and claim they never received notice of the hearing. The ALJs stated that because of the many documentation problems identified above, they have to accept these explanations. According to the ALJs, before these documentation problems developed they would not have typically accepted this explanation.

The Division Needs to Address Staffing and Management Issues Within Its Docketing Section

Staffing issues within the docketing section have primarily contributed to the documentation problems we just identified. As discussed previously, for most of Fiscal Year 2000 the docketing section was not fully staffed. During this time, the Division experienced significant turnover in this section, but management did not promptly fill these vacant positions. In fact, management took an average of 13 months to fill these positions. In addition, when management hired staff for these positions, they did not provide adequate training to these new staff members. Management's failure to immediately fill positions and properly train new staff led to a large backlog in the docketing section. This further created problems with accuracy, completeness, and timeliness of documentation related to hearings.

We also found that the Division has not assigned a full-time staff member to manage and oversee the docketing section. Currently the Division's Chief Administrative Officer has been assigned this responsibility, along with a number of other duties. This staff member stated that with her current workload she is unable to spend a large amount of time overseeing docketing operations. Yet, we found that more oversight is needed to improve the quality of services provided by the docketing section.

Docketing is key to the Division's hearings process and its customer service. It is important for the Division to immediately address the staffing issues within the docketing section. The many problems cited within this section are jeopardizing the Division's credibility and quality of services. In addition, improved documentation and data management is necessary to better operate the Division as a whole. Division staff need to periodically review data maintained by the Division to ensure that it is accurate and complete.

Recommendation No. 12:

The Division of Administrative Hearings should improve how it issues and maintains documentation related to the hearing process. To accomplish this, the Division should:

- a. Assign one full-time staff member to oversee and manage the docketing section.
- b. Ensure all docketing and support staff are properly trained on the documentation procedures and requirements related to the hearings process as well as on how to enter and access information in the computerized systems.
- c. Ensure there are an adequate number of support staff to address the Division's need to maintain accurate and complete records.
- d. Develop and implement a plan for eliminating the backlog in the docketing section, including hiring temporary staff to assist with this matter.
- e. Monitoring the information entered into the computerized systems on a periodic basis.

Division of Administrative Hearings Response:

- a. Agree. The Division is in the process of training one full-time docket staff member who has assumed the role of Lead Docket Clerk. Currently her responsibilities include setting cases for hearing; however, once all vacant docket staff positions are filled (January 2001), her primary responsibilities will be monitoring and oversight of the entire docket unit.
- b. Agree. The Division will ensure that all docketing and support staff are properly trained on the documentation process. Training for all docket staff will include how to enter and access information in the computerized systems. Written training materials will be developed and supplemented where materials currently exist.
- c. Agree. The Division is in the process of filling all vacant support staff positions to ensure proper maintenance and accuracy of records as well as to ensure an adequate number of staff to set hearings, assist the public, and assist Division staff in carrying out their duties. Until permanent employees are hired into vacant positions, the Division will continue to employ temporary staff in those positions.
- d. Agree. The Division has developed and implemented a plan for eliminating the backlog in the docketing section, including the hiring of temporary staff as noted in "c" above.

- e. Agree. The Division will begin the activity of formally monitoring information entered into the computerized system through a spot-check of files, applications, notices, and other documents.
-

Public Perception of the Hearings Process

Chapter 3

Background

Parties that participate in administrative hearings have had issues with the Division's operations for several years. For example, many individuals believed that some ALJs were biased in their decisions. Additionally, in the late 1980s the Division was criticized for taking too long, e.g., up to a year, to schedule hearings for workers' compensation cases. Although we reported on the public's perception of certain of the Division's activities in our 1992 and 1997 audits, parties to hearings still report major concerns. The Division has not taken actions needed to improve its services and, thus, enhance the public's perception of its operations. As discussed in Chapters 1 and 2, many current problems are a result of mismanagement of the Division.

Section 8-47-101(3)(d)(II), C.R.S., requires the Office of the State Auditor to conduct a performance review of the administrative law judges (ALJs) in the Division of Administrative Hearings who decide workers' compensation cases. The review must include:

...the public perception of the quality of the performance of the division of administrative hearings with respect to matters arising under the Workers' Compensation Act of Colorado.

To evaluate the public perception, we surveyed 751 individuals who had recent experience in the workers' compensation hearings process. Those surveyed had been involved in hearings conducted during February, March, April, and May 2000, and included claimants, claimant attorneys, employers, employer attorneys, and insurers.

In response to stakeholder concerns, we also surveyed 218 individuals involved in Departments of Human Services, Health Care Policy and Financing (HCPF), and Regulatory Agencies cases during February, March, April, and May 2000. Those surveyed included:

- State and county representatives for Human Services, HCPF, and Regulatory Agencies cases.
- Individuals appealing decisions or responding to charges placed against them by state or county representatives.

It should be noted that throughout this chapter we will be referring to survey responses related to Human Services, HCPF, and Regulatory Agencies cases as "other agencies cases."

With the exception of one factor, we used the same questionnaire and methodology as in our 1992 and 1997 audits. Because of concerns raised by stakeholders, we added a factor—timeliness of decisions—to the 2000 survey. The survey factors included:

- Timeliness of hearings.
- Timeliness of decisions.
- Professionalism of staff, including ALJs, schedulers, and other staff (e.g., court reporters).
- Fairness of staff.
- Fairness of procedures.

We received 291 responses for the workers' compensation survey for a 39 percent response rate. Additionally, we received 87 responses for the other agencies survey for a 40 percent response rate. We used rating scales from 1 to 7 for each of the survey factors. For timeliness of hearings and decisions, a rating of 1 means the survey participants found the process was "Too Slow," while a rating of 7 means the process was "Too Fast." According to our statistical methodology, a timeliness rating between 3 and 5 would be considered in the acceptable range. For professionalism and fairness, a rating of 1 means the survey participants found the staff or processes "Very Unprofessional" or "Very Unfair," while a rating of 7 means the staff or processes are "Very Professional" or "Very Fair." According to our statistical methodology, a professionalism or fairness rating between 4 and 7 would be in the acceptable range.

Survey Responses Varied by Hearing Outcome and Types of Cases and Participants

In general, we found that hearing outcomes (win/lose) affected how some workers' compensation participants rated the Division's operations and staff. As the following chart shows, workers' compensation survey participants who reported winning their cases had the most responses in the acceptable range. Specifically, claimants and claimant attorneys who won their cases rated the ALJs and the fairness of the procedures in the acceptable ranges more frequently than those who lost their cases. At the same time, we found that employers and employer attorneys rated the ALJs and fairness of the procedures more consistently, regardless of whether they won their cases. A majority of the insurers rated ALJ fairness as unacceptable, regardless of whether they won their cases.

Workers' Compensation Percentage of Ratings in Acceptable Ranges Compared With Reported Win/Lose Status									
Survey Participant Type	ALJ Professionalism			ALJ Fairness			Fairness of Procedures		
	Win	Lose	Partial	Win	Lose	Partial	Win	Lose	Partial
Claimants	100.0%	22.2%	100.0%	100.0%	5.6%	87.5%	88.9%	16.7%	75.0%
Claimant Attorneys	88.5%	0.0%	86.1%	88.5%	0.0%	76.5%	70.4%	0.0%	69.4%
Employers	92.9%	82.4%	89.5%	96.4%	58.8%	66.7%	96.4%	70.6%	73.7%
Employer Attorneys	88.9%	87.5%	85.7%	77.8%	50.0%	78.6%	75.0%	57.1%	64.3%
Insurers	100.0%	88.9%	90.5%	0.0%	27.8%	50.0%	100.0%	52.6%	63.6%

Source: Office of the State Auditor's analysis of 2000 survey results, September 2000.

As the following table shows, the hearing outcome also affected how individuals involved in other agencies cases rated the ALJs and the fairness of procedures. Individuals who lost their cases were less likely to rate these factors in the acceptable range than those individuals who fully or partially won their cases. At the same time, ratings given by state and county representatives were not affected by the hearing outcome. It should be noted, however, that only one participant from this group reported losing. This participant rated the ALJs and fairness of the procedures in the acceptable range.

Other Agencies Percentage of Ratings in Acceptable Ranges Compared With Reported Win/Lose Status									
Survey Participant Type	ALJ Professionalism			ALJ Fairness			Fairness of Procedures		
	Win	Lose	Partial	Win	Lose	Partial	Win	Lose	Partial
State/County Representatives	84.0%	100.0%	80.0%	92.0%	100.0%	84.2%	88.0%	100.0%	80.0%
Individuals	87.5%	45.5%	100.0%	100.0%	27.3%	90.0%	87.5%	36.4%	90.0%

Source: Office of the State Auditor's analysis of 2000 survey results, September 2000.

In addition, employers generally rated the Division higher in each factor than did the other groups from the workers' compensation survey, while claimants mostly rated the Division the lowest in these factors. The following chart shows the percentage of responses in the acceptable ranges by each survey participant type for each factor.

Workers' Compensation Comparison of Responses in Acceptable Ranges by Participant Type					
Factor	Claimants	Claimant Attorneys	Employers	Insurers	Employer Attorneys
Timeliness of Hearings	50.0%	80.0%	86.0%	95.6%	80.4%
Timeliness of Decisions	35.6%	43.8%	61.2%	37.8%	26.7%
ALJ Professionalism	76.7%	84.4%	89.7%	86.0%	87.0%
Scheduling Staff Professionalism	76.5%	80.6%	96.7%	92.5%	79.1%
Other Staff Professionalism	75.5%	88.1%	95.2%	97.6%	87.5%
ALJ Fairness	66.7%	79.0%	79.1%	40.9%	73.9%
Scheduling Staff Fairness	76.0%	88.5%	95.2%	87.5%	88.1%
Other Staff Fairness	74.5%	87.9%	96.8%	90.0%	92.7%
Fairness of Procedures	60.7%	67.7%	83.6%	59.1%	65.9%

Source: Office of the State Auditor's analysis of survey results, September 2000.

As the following chart indicates, individuals involved in other agencies cases generally rated the Division lower than did state and county representatives.

Other Agencies Comparison of Responses in Acceptable Ranges by Participant Type		
Factor	State/County Representatives	Individuals
Timeliness of Hearings	70.8%	65.6%
Timeliness of Decisions	52.1%	73.3%
ALJ Professionalism	83.3%	78.1%
Scheduling Staff Professionalism	75.6%	55.2%
Other Staff Professionalism	88.6%	52.0%
ALJ Fairness	87.2%	67.7%
Scheduling Staff Fairness	88.9%	78.6%
Other Staff Fairness	96.7%	69.6%
Fairness of Procedures	83.3%	67.8%

Source: Office of the State Auditor's analysis of survey results, September 2000.

Responses for Each Factor Continue to Raise Concerns

We analyzed the responses to the five survey factors—timeliness of hearings, timeliness of decisions, professionalism of staff, fairness of staff, and fairness of procedures—by case and participant types. In general, the survey participants rated these five factors in the acceptable range. As the following chart shows, however, workers' compensation and other agencies survey participants rated timeliness of hearings and decisions the lowest. Although the timeliness ratings are considered "acceptable," the survey results indicate that participants believe the process is slow.

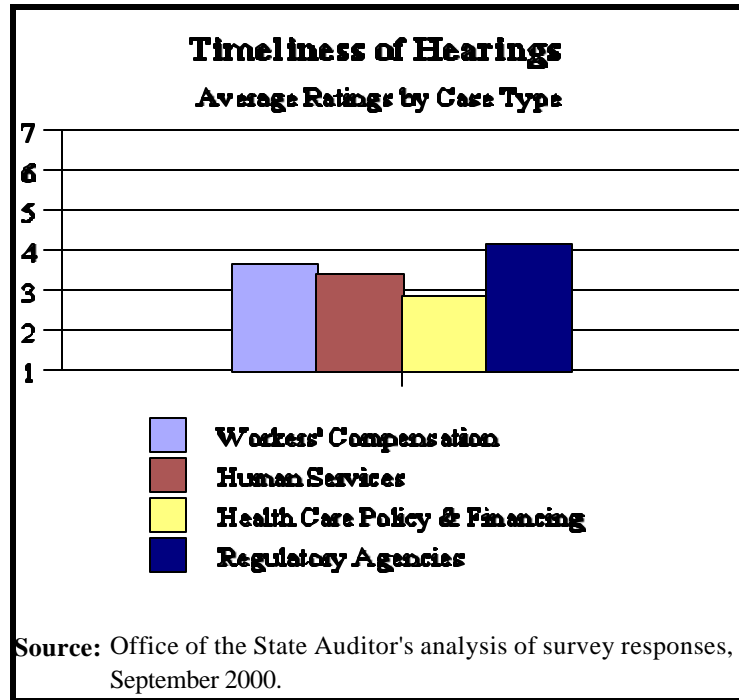
Workers' Compensation and Other Agencies Survey Results Average Ratings for Timeliness, Professionalism, and Fairness			
Factor	Workers' Compensation		Other Agencies 2000 Survey Results
	1997 Survey Results	2000 Survey Results	
Timeliness of Hearings	3.6	3.6	3.3
Timeliness of Decisions	NA	3.0	3.0
ALJ Professionalism	4.9	5.2	5.2
Professionalism of Scheduling Staff	5.2	4.9	4.4
Professionalism of Other Staff	5.2	5.0	4.6
ALJ Fairness	4.4	4.6	5.0
Fairness of Scheduling Staff	5.2	5.0	5.0
Fairness of Other Staff	5.2	4.9	5.0
Fairness of Procedures	4.4	4.3	4.6

Source: Office of the State Auditor's analysis of 1997 and 2000 survey results, February 1997 and September 2000.

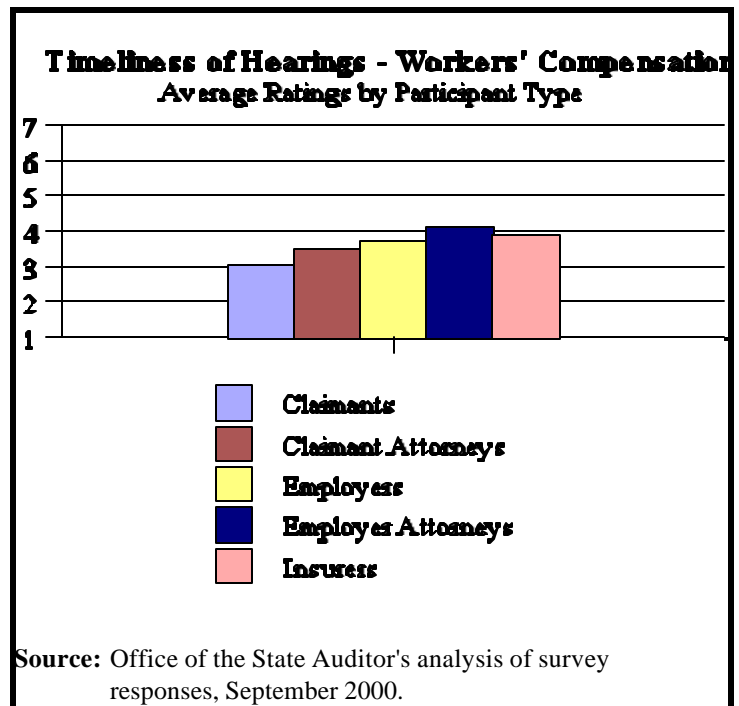
In the following sections, we provide specific information related to the results for each factor. We also include a summary of the written comments provided in the surveys.

Timeliness of Hearings

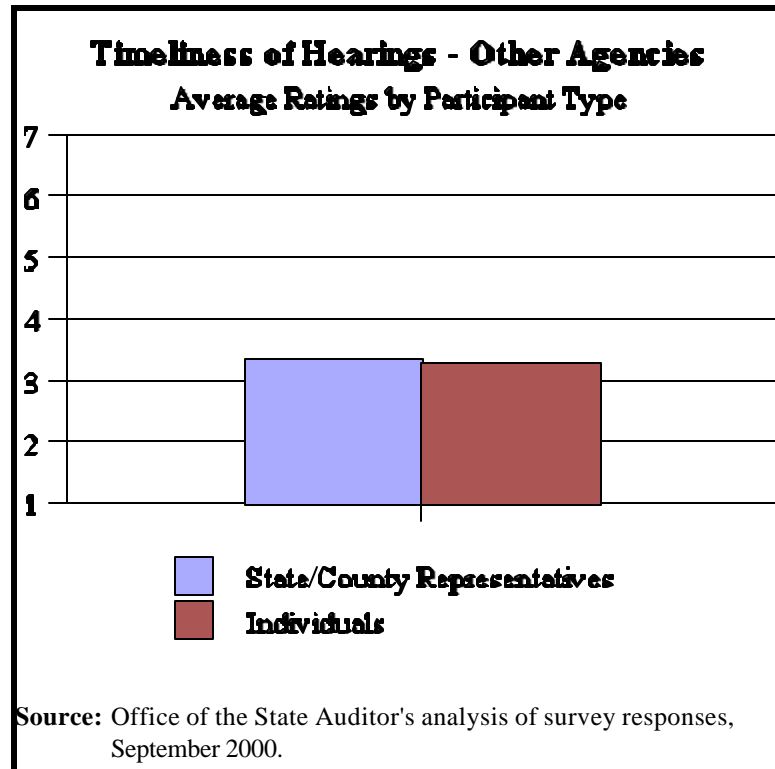
On a scale ranging from 1 (Too Slow) to 7 (Too Fast), with 3, 4, and 5 being acceptable, most survey participants rated the Division in the acceptable range for timeliness of hearings. Responses varied, however, according to case and participant types. As the following chart shows, survey participants involved in HCPF cases were the only group that rated the Division in the unacceptable range for timeliness of hearings.



Average ratings by participant types are compared in the following two charts. The first chart shows the average ratings by workers' compensation participants. On average, all participant types rated the Division in the acceptable range. Claimants rated timeliness of hearings the lowest while employer attorneys rated this factor the highest.



The chart below shows the average ratings given by participants involved in the other agencies cases. Both participant types rated the Division's timeliness of hearings at the low end of the acceptable range.

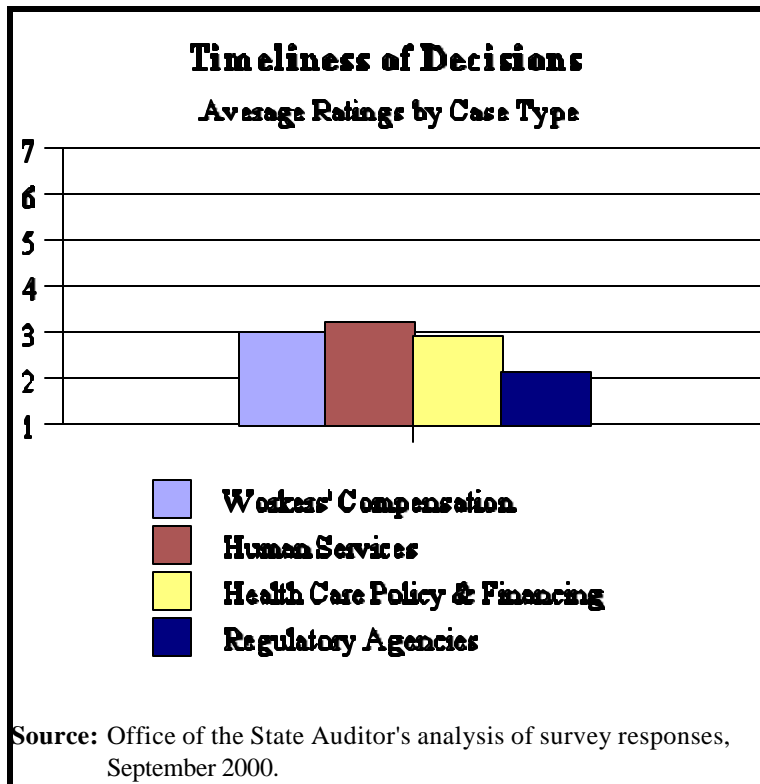


As discussed in Chapter 2, we identified several instances where the Division has not met the time requirements for scheduling hearings for workers' compensation, Human Services, HCPF, and Regulatory Agencies cases. Overall, the Division's timeliness in this area has declined since our last audit. This is further evidenced by the written comments provided by survey participants. Specific comments included:

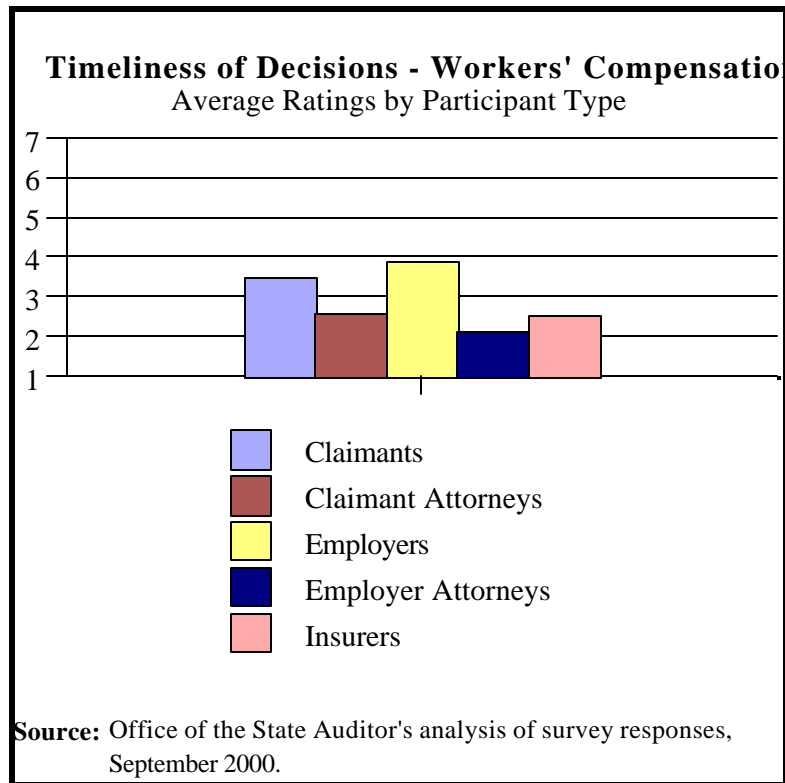
- It frequently takes 30 to 45 days for a notice of hearing to even be issued after the DOAH receives a request from a client. This delay creates undue hardship on the appellant (individuals) and the county department and means that there is no way the judge can issue an initial decision within the State Department of Human Services' guidelines. [Human Services—state/county representative]
- The scheduling of hearings is the slowest part of the process during the past year or so. [Human Services—attorney for individual]

Timeliness of Decisions

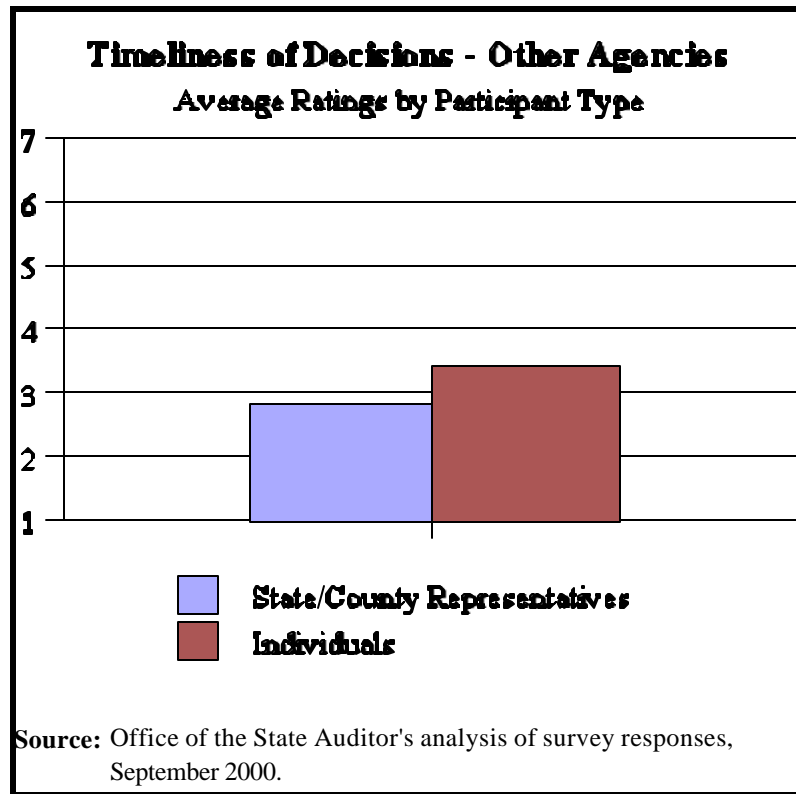
In general, survey participants rated timeliness of decisions the lowest of all the survey factors. In fact, several participants rated this factor in the unacceptable range. As the following chart shows, on average, participants involved in workers' compensation, HCPF and Regulatory Agencies cases rated the Division in the unacceptable range for timeliness of decisions. These ratings indicate the process is too slow.



The following chart shows that workers' compensation employers rated timeliness of decisions the highest. However, three participant groups—claimant attorneys, insurers, and employer attorneys—rated this factor in the unacceptable range.



As shown in the chart below, individuals involved in other agencies cases rated timeliness of decisions higher than the state and county representatives. In fact, state and county representatives rated this factor in the unacceptable range.

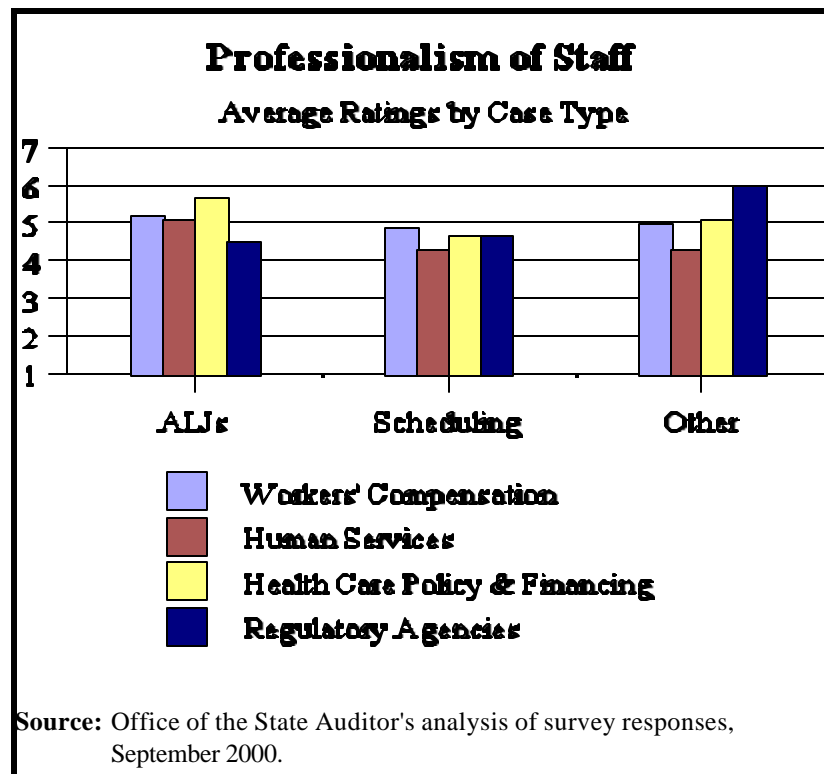


More than 40 survey participants (11 percent) stated that the ALJs take too long to issue decisions. Specific comments included:

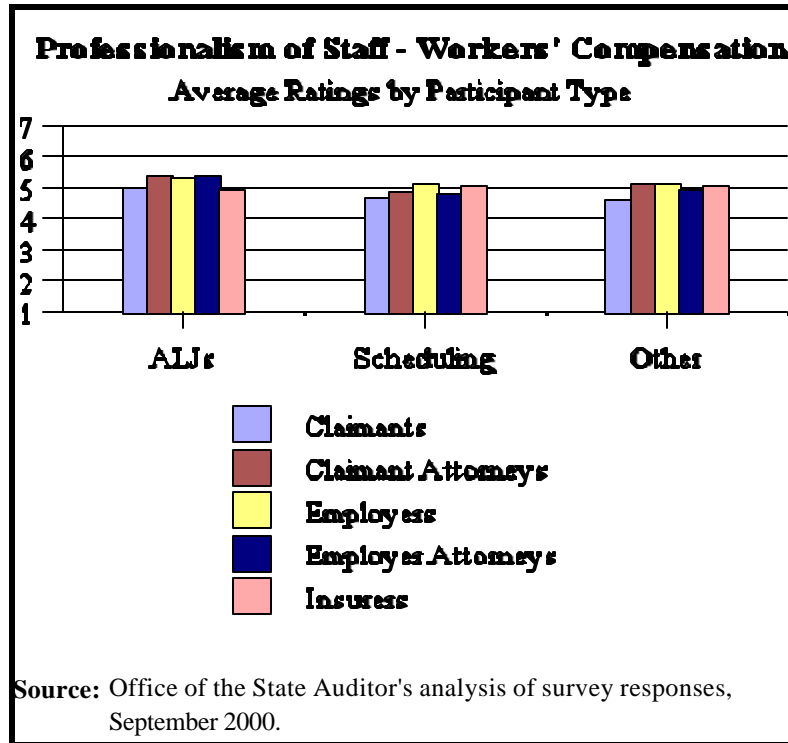
- Because many of the new judges are unfamiliar with the nuances of the workers' compensation law and with medical issues, it seems that orders are running way behind schedule. We now find ourselves waiting months for orders that should have been issued in a more timely fashion. This is inherently unfair to all parties involved in the dispute. [Workers' Compensation—claimant attorney]
- I am somewhat satisfied (with the hearing process), except for a hearing I had 3 months ago and have not received a decision as of yet. [Workers' Compensation—employer]
- The significant delay in issuing initial decisions, even in cases of defaults, does a disservice to the public when the respondent is employed in a profession involving the safety of others. [Regulatory Agencies—state representative]
- It sometimes takes over four months to get a final (decision). [Human Services—state/county representative]

Professionalism of Staff

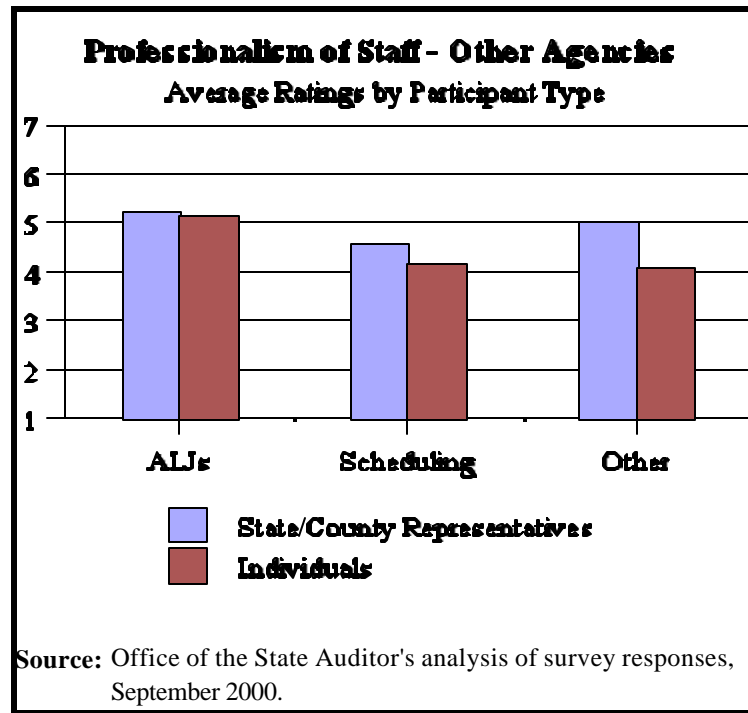
We asked participants to rate the Division staff's professionalism on a scale of 1 (Very Unprofessional) to 7 (Very Professional), with ratings of 4 to 7 being in the acceptable range. Average ratings for professionalism were in the acceptable ranges. As the following chart indicates, the ratings varied depending on the type of case. HCPF participants rated ALJ professionalism the highest, while Regulatory Agencies participants rated this area the lowest.



On average, workers' compensation participants rated the professionalism of all Division staff about the same, as shown below. In general, claimants tended to give the lowest ratings.



As shown in the chart below, other agencies survey participants rated the professionalism of ALJs the highest of the three types of staff. Individual participants rated the professionalism of scheduling and other staff lower than state and county representatives.



Several workers' compensation and other agencies participants wrote positive comments on the professionalism of staff. Specific comments included:

- The interaction with the judges has been a pleasant experience. They show patience and understanding amidst our confusion. [Human Services—state/county representative]
- The judges are the most professional kind of people. [Workers' Compensation—claimant]
- The current staff has been accommodating to our needs and requests for informational meetings and clarification. The caliber of judges seems to have improved. [Human Services—state/county representative]
- Everyone was professional, courteous, timely, and the judge attempted to aid in the comfort level. [Human Services—individual]
- I was worried at first the new ALJs would not know history or case law, but they have learned quickly and they are all doing a great job - very refreshing actually. [Workers' Compensation—employer]

Although some participants stated the staff were professional, 90 participants (24 percent) expressed concerns regarding ALJ professionalism. The issues raised included:

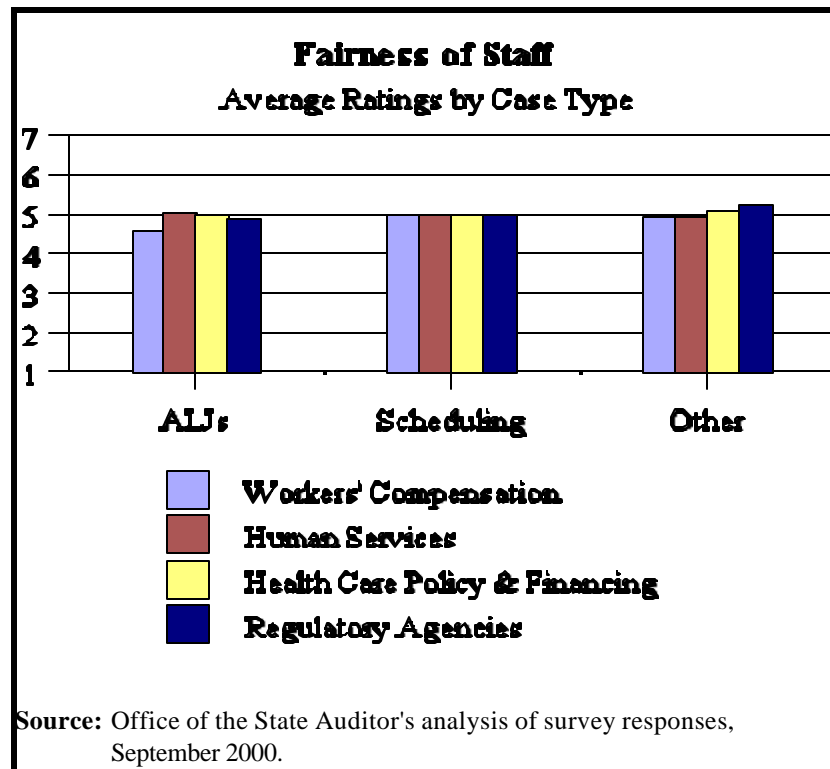
- **Unprofessional conduct by ALJs**, including rudeness, interrupting parties, irritability, frustration, disrespect, and negative attitudes. Specific comments included:
 - < There were some very personal "digs" and inflaming remarks in this order (decision) which seemed very inappropriate and unnecessary. Even our attorney was appalled with the slanderous remarks in this order. [Workers' Compensation—insurance adjustor]
 - < Some of the judges are very obvious that they think it is beneath them to hear Human Services cases. Attitudes and tones have come through on more than one occasion. [Human Services—state/county representative]
 - < Having practiced at the District Court level in another state and now in Colorado, I am shocked and disappointed at the lack of professionalism and apparent incompetence of the DOAH. Some of the ALJs do not know or understand the law and despite the lack of complexity of certain pending matters, they are unable to draft and issue decisions in a timely manner. [Regulatory Agencies—state representative]
 - < I find some judges too quick to cut parties off when they are offering testimony. Usually the cut off is not explained. [HCPF—attorney for an individual]
- **Inadequate knowledge of rules and regulations** related to Workers' Compensation, Human Services, HCPF, and Regulatory Agencies, resulting in a lack of understanding of the law and the need for parties involved in the cases to educate the ALJs. Specific comments included:
 - Most recently, a new ALJ spent more time reading from a script because this ALJ had no idea what process goes on at workers' compensation hearings. I had the distinct impression this ALJ did not understand the very simple issues for the hearing and did not listen to testimony. [Workers' Compensation—claimant attorney]
 - It has appeared that the judges were not familiar with the regulations pertaining to the appeals I've been involved in. In two different hearings, more time was

spent educating the judges than in testimony. [Human Services—state/county representative]

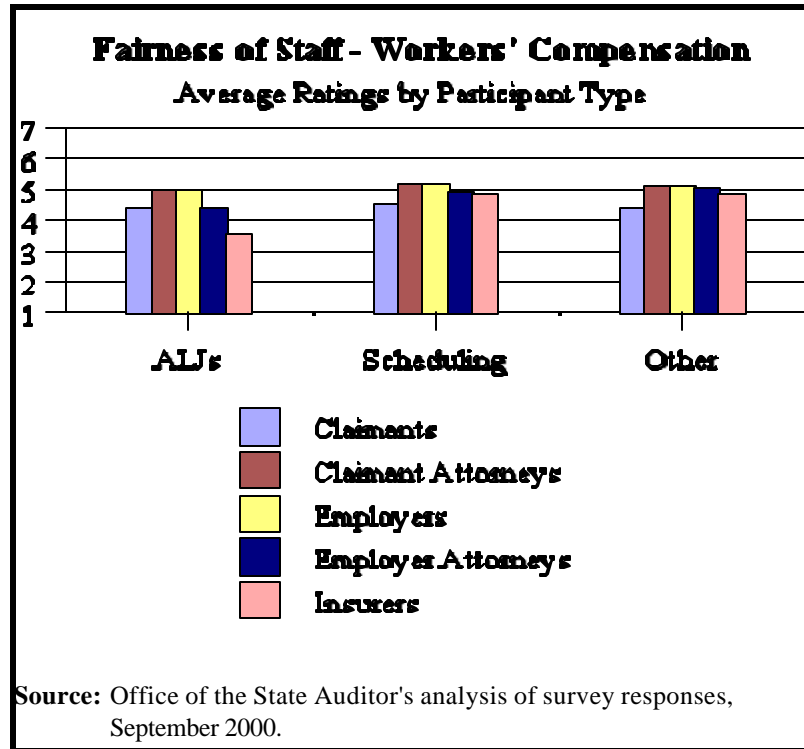
- I feel the judges have too many different programs and are not knowledgeable about the specifics of the particular program they are dealing with. [HCPF—state/county representative]

Fairness of Staff

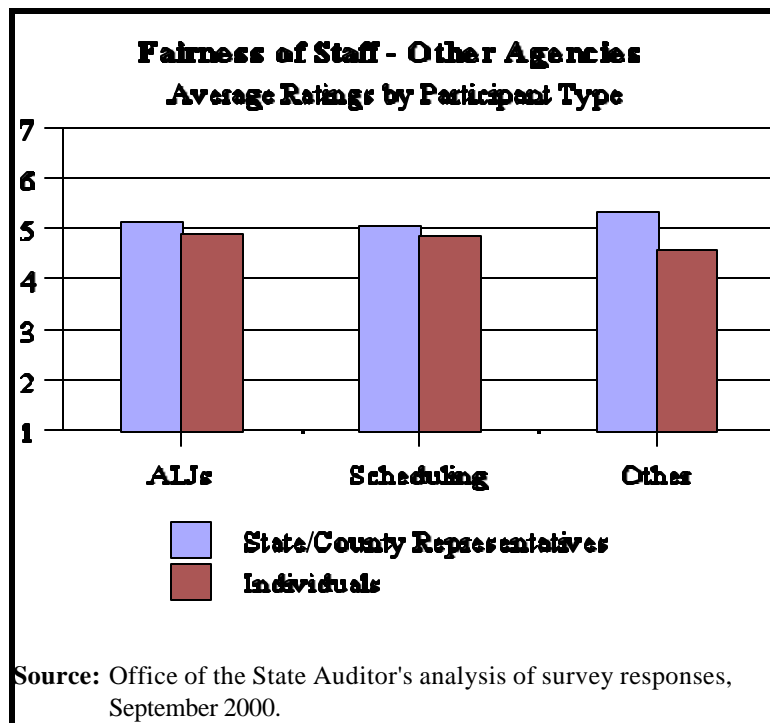
We asked individuals to rate the Division's staff on fairness on a scale of 1 (Very Unfair) to 7 (Very Fair), with ratings of 4 to 7 being in the acceptable range. Overall, survey participants rated the fairness of staff in the acceptable range. As the following chart shows, workers' compensation participants rated the fairness of the ALJs lower than participants involved in other agencies cases. Participants involved in workers' compensation and other agencies cases rated scheduling and other staff about the same.



Of the workers' compensation participants, claimants and insurers rated the fairness of staff the lowest. In fact, insurers rated the fairness of the ALJs as unacceptable.



The following chart shows that individuals involved in the other agencies cases gave lower average ratings for fairness of staff than did state and county representatives. This would be expected because more individual participants lost their cases than did state and county representatives.



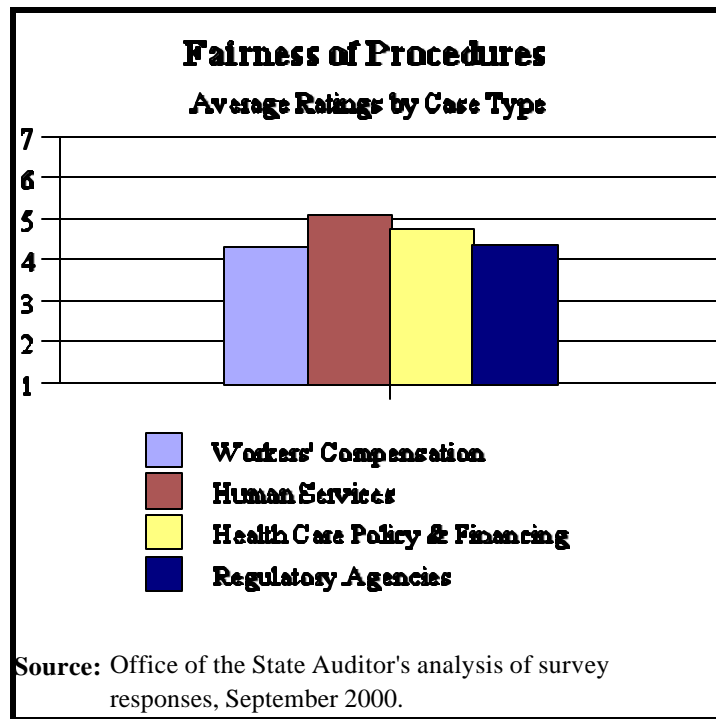
Many survey participants wrote comments concerning fairness of staff. While some participants stated that the ALJs were fair, 33 participants (9 percent) said the ALJs were unfair or biased. Specific comments included:

- I felt the process was fair. I did not feel intimidated by the staff and everyone was pleasant. [Workers' Compensation—claimant]
- The judge looked over my case for 5 minutes and ruled in favor of the defendant. She did not even consider what my lawyer had in the file or that the doctors' reports showed that the symptoms I have occur whether I was at home doing nothing or working. [Workers' Compensation—claimant]
- All the judges I have been in contact with have been professional and fair. They have treated me, my clients with respect and dignity always. [Human Services—state/county representative]
- If the client is present, the judge tends to accept anything the client says, regardless of documentation. [Human Services—state/county representative]
- All the judges I have dealt with in the last year have been professional, thorough, and fair. [Human Services—attorney for an individual]

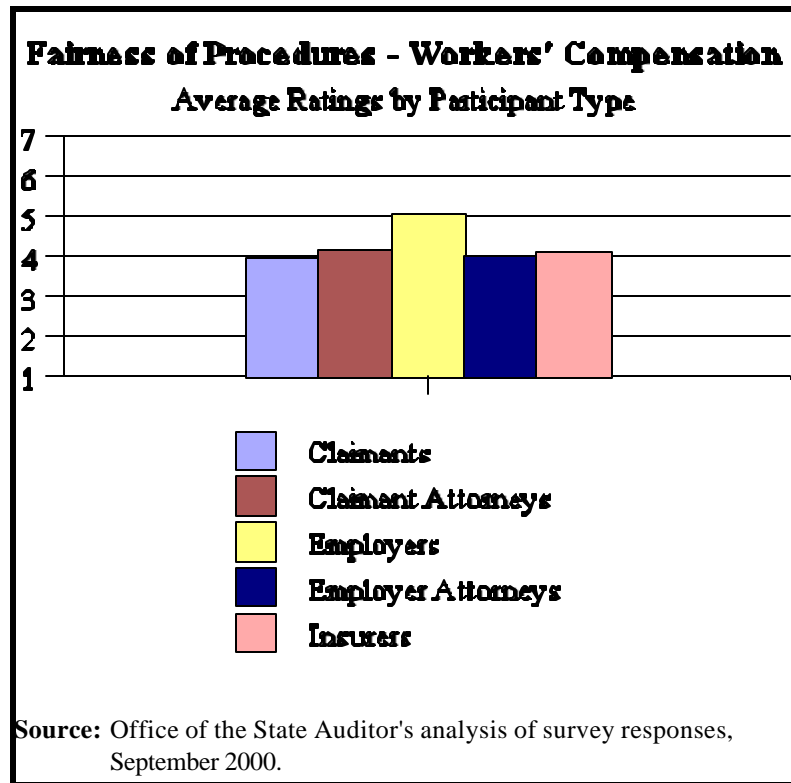
- The DOAH rules of procedure are largely ignored to accommodate (the individuals involved in these cases), who are often allowed to ignore discovery deadlines and stretch the rules of evidence beyond the boundaries of decency. [Regulatory Agencies—state representative]

Fairness of Procedures

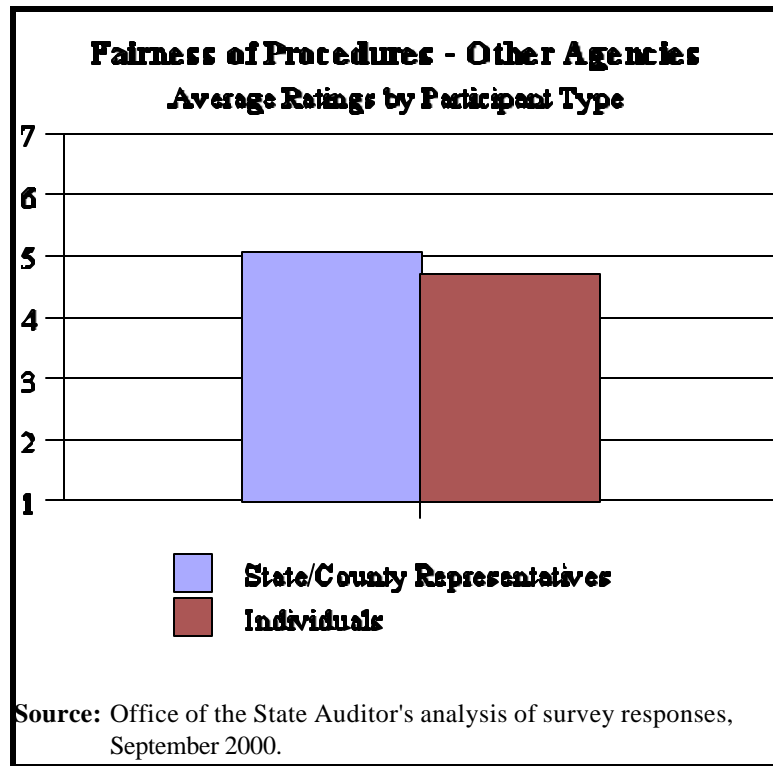
Finally, we asked survey participants to rate the Division's fairness of procedures on a rating scale of 1 (Very Unfair) to 7 (Very Fair), with ratings of 4 to 7 being acceptable. Overall, the average rating was 4.3 from workers' compensation participants and 4.6 from other agencies participants. Both ratings were in the acceptable range. The following chart shows that participants involved in Human Services cases rated the fairness of the procedures the highest while workers' compensation participants rated this factor the lowest.



Of the workers' compensation survey participants, employers rated the fairness of the procedures the highest.



For the other agencies, state and county representatives rated fairness of procedures higher than individuals, as shown in the following chart.



Some participants commented on the overall fairness of the procedures. An individual involved in a HCPF case wrote:

The patient states that the process was not fair because no one saw her do the activities that increase her pain, nor did anyone truly explain what was being done. The process never involved anyone spending time helping to explain what was to be done at the hearing and what evidence they had to base their decisions.

Other Comments Provided by Participants

In addition to the issues described previously in this chapter, survey participants provided written comments related to the following issues:

- **Chaos within the Division.** About 20 participants, mostly workers' compensation, stated that they believed the Division is in chaos. Specific comments included:

- < The Division has never been in worse shape. Leadership change is mandatory. The unavailability of court reporters, taping hearings, etc. are all negative changes. [Workers' Compensation—claimant attorney]
- < The docketing process is broken, particularly as it relates to rescheduled matters. Attorneys will be advised of rescheduled dates only to get to DOAH with witnesses in tow and to be told that docket has no record of hearings. On other occasions, parties, witnesses, and counsel show up only to be told that the ALJ is not available because he/she is on the docket in another city. This problem is the worst it has been in more than 20 years. [Workers' Compensation—employer attorney]
- < DOAH is in chaos - expedited hearings are a joke. They all get continued and it is impossible to get new dates. It takes me 6 months to a year to get to court. [Workers' Compensation—claimant attorney]
- < (The Director) has turned the Division of Administrative Hearings into a kangaroo court. [Workers' Compensation—employer attorney]
- **Reorganization within the Division.** We specifically asked participants to comment on whether the Division's reorganization, particularly the implementation of the full rotation of the ALJs, was positive or negative. Responses to this question varied. We found that 94 participants (25 percent) stated that the reorganization was positive. Some believed the rotation of judges resulted in fairer hearings. However, 84 participants (22 percent) did not believe the reorganization was positive. Reasons included the lack of knowledge by ALJs with respect to the rules and regulations for certain types of cases and the unfamiliarity by the parties as to how specific ALJs operate their hearings.
- **Support Staff.** Many survey participants commented about the Division's support staff. As mentioned earlier in the report, many of the comments provided by participants cited problems with documentation related to the hearings process. Other issues raised by participants included:
 - < **Problems with the hearings**, such as the hearing started late because support staff did not know in which courtroom the hearing was to be held.
 - < **Problems with customer service over the phone**, such as staff placing callers on hold for a long period of time.

The Division Should Use Survey Results to Improve Services

Throughout this report we discussed many problems that have resulted from poor management decisions, the effect of which has been a decrease in the quality of services provided to the public and other government agencies. For example, hearings have not been scheduled and decisions have not been issued according to statutory time requirements. In addition, the average ratings for the Division's staff and procedures on our survey have not changed significantly from our previous audits. Although we made recommendations in both our 1992 and 1997 audits for improving services, the Division has not taken the corrective actions needed (as discussed in Chapter 4). Perhaps if the Division had made the improvements, the public perception ratings would have increased.

In our 1997 report we recommended that the Division use the survey results to improve its services to the public. We suggested that the Division review the analysis of our survey responses and then communicate these results to staff and develop an action plan. We stated that this plan should identify key areas for improvement and should include specific solutions to the problems uncovered in the survey. As discussed in Chapter 4, the Division has not implemented this recommendation. We still believe it is important that the Division review and use these survey results to improve the quality of the services it provides to the public and other government agencies.

Recommendation No. 13:

The Division of Administrative Hearings should improve its services to the public by:

- a. Reviewing the analysis of our survey results to determine party concerns and trends.
- b. Developing an action plan identifying key areas for improvement and specific solutions to noted problems.
- c. Monitoring progress toward meeting defined plan goals regularly.
- d. Incorporating feedback from the survey results into the ALJs' performance plans and evaluations.

Division of Administrative Hearings Response:

- a. Agree. The Division will review the analysis of the State Auditor's survey results to determine party concerns and trends.
 - b. Agree. The Division will develop an action plan in the Spring of 2001.
 - c. Agree. The Division will begin monitoring progress toward meeting defined plan goals once the action plan is developed.
 - d. Agree. Feedback will be incorporated in the 2002 performance plans in July 2001, both on an individual and team basis where appropriate.
-

Implementation of Prior Audit Recommendations

Chapter 4

Background

In May 1997 the Office of the State Auditor issued a statutorily required audit report on the workers' compensation hearing process at the Division of Administrative Hearings. The report contained 11 recommendations for improving the Division's workers' compensation activities. The Division agreed with all recommendations.

The following is a summary of the May 1997 narrative, the audit recommendations, the Division's responses, and our evaluation of the actions the Division has taken to date. We found that the Division has taken steps to address some of the recommendations. However, most of the concerns identified in 1997 are still problems today. For example, the Division still needs to improve its services to the public through seeking feedback from all types of parties to hearings (e.g., non-attorneys). It also has not implemented the recommendations to improve its billing practices. The division director said the recommendations were not implemented "because there has not been enough time to implement all of the recommendations in the 18 months since the restructuring [reorganization of the Division] began."

Improve Compliance With Statutory Time Requirements

The Colorado Workers' Compensation Act, as modified by Senate Bill 91-218, provides a time schedule for hearings and decisions. In our 1997 audit we found that applications that were withdrawn and redated tended to exceed maximum statutory time requirements. We also found that computer time records were distorted and were not compared with self-reported information.

Recommendation No. 1 (May 1997):

The Division of Administrative Hearings should improve its compliance with the time requirements in the Workers' Compensation Act by:

- a. Completing hearings within the allowed time limits or seeking a statutory change to allow more flexibility in scheduling hearings.
- b. Stopping the redating of applications and accurately reporting the length of time it takes to complete a hearing from the original date of the application.
- c. Ensuring management reviews the computer-generated timeliness reports for accuracy and compliance with the statutory time requirements.
- d. Including accuracy in timeliness reporting as part of ALJ evaluations.

Division of Administrative Hearings Response (May 1997):

Agree. (a) The Division of Administrative Hearings will make Herculean efforts to complete all hearings within the allowed statutory time limits for all matters within its control. If there is difficulty based on present resources, the Division, working with the Division of Workers' Compensation, will seek a statutory change to allow more flexibility in scheduling hearings.

(b) The redating of applications stopped in early May 1997. Now, if an application is withdrawn, the file is closed, returned to the Division of Workers' Compensation and a new application for hearing must be filed to open a new case. This will ensure accuracy of reporting the length of time it takes to complete hearing from the original date of the application in an open case.

(c) The Division will phase into relying entirely on computer-generated timeliness reports for accuracy and compliance with the statutory time limits, thus, making unnecessary a reconciliation between computer-generated timeliness reports and hand-generated timeliness reports. This will occur by October 1997.

(d) Accuracy and timeliness of reporting have been included as a performance factor in the performance plans for Fiscal Year 1998 which are being finalized in June 1997.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has not been implemented. As discussed in Chapter 2 of this report, the Division does not track compliance with time requirements in the Workers' Compensation Act. Although the Division reported that it stopped redating applications, it does not track the length of time it takes to complete a hearing. Additionally, management could not provide us with computer-generated reports on timeliness. The Division also eliminated timeliness as a factor on the ALJ evaluations in 2000. Management indicated that timeliness would be included as a performance factor in the future but could not provide assurance that it would do so.

Improve Process for Disfigurement Awards

In our 1997 audit we found that the Division's disfigurement award process was expensive and subjective. Disfigurement awards varied depending upon the ALJ. We found that a disfigurement schedule could save time and money.

Recommendation No. 2 (May 1997):

The Division of Administrative Hearings and the Division of Workers' Compensation should work together to identify and propose statutory changes as needed to create a less expensive and less subjective process for assessing disfigurement awards. This process should include use of a written schedule to determine award amounts.

Division of Administrative Hearings Response (May 1997):

Agree. The Division of Administrative Hearings and the Division of Workers' Compensation will work together to create a less expensive and less subjective process for assessing disfigurement awards.

Division of Workers' Compensation Response (May 1997):

Agree. The Division of Workers' Compensation agrees that there should be a guideline for consistency. At this time we do not believe that there should be a statutory change to the use of a written disfigurement schedule. The Division of

Administrative Hearings should have the latitude to develop their own procedural guidelines for consistency, much as CCIA has done. The Division of Workers' Compensation agrees to work with the Division of Administrative Hearings to create a less expensive and less subjective process for assessing disfigurement awards.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has been partially implemented. The 1999 General Assembly Interim Committee on Administrative Law Judges proposed legislation that would specify that "disfigurement determinations in workers' compensation cases shall be made exclusively by the director of the division of workers' compensation in the department of labor and employment or the director's designee." The resulting Senate Bill 00-30 required the director of the Division of Workers' Compensation "to adopt a schedule for such [disfigurement] determinations and specifies that such determinations shall be final." This bill was not passed by the General Assembly. However, the Division did prepare disfigurement award guidelines.

Propose Statutory Changes for ALJ Approval of Uncontested Deposition Requests

In our 1997 audit we found that approval for uncontested deposition requests was very costly and took a lot of time. Division staff spent more than 600 hours (or \$35,000 in billings to the Division of Workers' Compensation) annually approving uncontested deposition requests. While eliminating review and approval of the uncontested deposition requests, ALJs could continue to review deposition requests that involve claimants without attorneys.

Recommendation No. 3 (May 1997):

The Division of Administrative Hearings should propose statutory changes to discontinue the practice requiring ALJ approval of uncontested deposition requests in cases when a party is represented by an attorney.

Division of Administrative Hearings Response (May 1997):

Agree. In order to avoid any appearance of impropriety, it is not appropriate for the Division of Administrative Hearings to be recommending substantive statutory changes, however, the Division will work with the Division of Workers' Compensation to propose statutory changes to discontinue the statutory mandate of requiring ALJ approval of uncontested deposition requests in cases where the party is represented by an attorney.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has been implemented. House Bill 98-1055, which allows parties to a workers' compensation claim to agree to engage in discovery if both parties are represented by an attorney, was passed in the 1998 legislative session. This Bill also eliminated the requirement that discovery or written depositions may not be taken without a prior order from an administrative law judge.

Collect and Use Appeal and Reversal Data

In our 1997 audit we found that the Division did not compile or use appeal and reversal data in a systematic or documented way. These data represent a valuable management tool. Appeals and reversal data could be used for state policymakers to make decisions about the Division, to evaluate their hearing programs, to address the perception that ALJs favor one side or the other, and to evaluate ALJs and hold them accountable for performance measures.

Recommendation No. 4 (May 1997):

The Division of Administrative Hearings should systematically collect appeal and reversal data in total and by administrative law judge. It should use this information as a management tool for performance evaluations and report it in its report to the Governor and the General Assembly. It should also make these data available at least annually to groups involved in workers' compensation hearings.

Division of Administrative Hearings Response (May 1997):

Agree. The Division of Administrative Hearings systematically collected computer-generated reversal data in total and by administrative law judge in May 1997 after the audit field work was completed. A one-page handout marked as "Exhibit a" reflects this. This information will be used as a management tool commencing on July 1, 1997, whereby peer groups will meet to discuss reversal and reasons for reversals on reversed cases. Although the Division has slightly increased in the percent of decisions reversed, 15 percent compared to 13 percent in 1992, appropriately 889 decisions were appealed in Fiscal Year 1992 and only 601 cases were appealed in Fiscal Year 1996. Therefore, the Division should get credit in the audit narrative, somewhere, that the Division actually has a 32 percent decrease in the number of decisions that get appealed in the first place.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has been partially implemented. As discussed in Chapter 2, the Division included appeals and reversal information in ALJ performance evaluations. The Division of Administrative Hearings has not compiled this information in total or used it in an annual report to give to the Governor and General Assembly.

Improve Communication Among ALJs

In our 1997 audit we found, on average, the Denver ALJs who participated in a formal peer review program and communicated frequently with each other had lower reversal rates than ALJs in the field offices. The ALJs who participated in the formal peer review process told us that it helped in their decision making and may have resulted in lower reversal rates.

Recommendation No. 5 (May 1997):

The Division of Administrative Hearings should ensure regular communication among all workers' compensation ALJs by:

- a. Extending the peer review program to the field offices.

- b. Scheduling regular meetings with all workers' compensation ALJs to discuss legal developments and Division policies and practices.

Division of Administrative Hearings Response (May 1997):

Agree. (a) The peer review program has been extended to the field offices as of May 22, 1997.

(b) Regular, statewide, staff meetings, in person and through teleconferencing, began in April 1997 and are continuing on a monthly basis.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has been implemented. In February 1999 the Division implemented a policy requiring that all ALJs submit eight decisions each year for non-supervisory, pre-issuance quality assurance review. The ALJs in the field offices must also comply with this policy. In addition, since January 1999 the Division has scheduled monthly meetings with the ALJs to discuss legal developments and other relevant issues.

Use Survey Results to Improve Services

In our 1997 audit we found that Division management made only limited use of its own attorney surveys. Because we were required by statute to assess the "public perception of the quality of the performance of the division of administrative hearings with respect to matters arising under the Workers' Compensation Act of Colorado," we conducted a survey of parties to hearings. We found that many of the parties were concerned about the hearings processes. We concluded that the Division should use our survey results to improve its services to the public by identifying areas for improvement and developing corrective action plans.

Recommendation No. 6 (May 1997):

The Division of Administrative Hearings should improve its services to the public by:

- a. Reviewing the analysis of our survey results to determine party concerns and trends.

- b. Developing an action plan identifying key areas for improvement and specific solutions to noted problems.
- c. Monitoring progress toward meeting defined goals regularly.
- d. Reporting survey results in and improvement plans in its biennial report to the General Assembly and the Governor. This information should also be made available to the public.
- e. Incorporating feedback from the survey results into the ALJs' performance plans and evaluations.

Division of Administrative Hearings Response (May 1997):

Agree. (a) The Division is forming a team to review and analyze the auditor's survey results to determine party concerns and trends, beginning in June 1997.

(b) An action plan identifying key areas for improvement and specific solutions to be noted problems will be developed by the team by September 1, 1997. It should be noted that the Division presently seeks customer feedback through 3-inch by 5-inch cards.

(c) Progress toward meeting the defined plan goals will begin on August 1, 1997, and continue on a monthly basis throughout the fiscal year.

(d) The survey results and improvement plans will be included in the next biennial report, anticipated to be issued in August 1998. The information will also be made available to the public on the Internet and through other means.

(e) Feedback from the survey results, that is specific objectively measurable concerns, will be incorporated in ALJ's performance plans and evaluations commencing with the next evaluation period beginning in May 1998.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has not been implemented. As discussed in Chapter 3, the Division does not seek feedback from other groups such as claimants, employers, and insurance carriers. Our current survey indicates that these groups continue to have concerns regarding the timeliness of hearings and decisions and the professionalism of staff. We are making this recommendation again in Chapter 3.

Reassess Minimum Billing Increments

In our 1997 audit we found that the Division had adopted a billing policy that allowed it to bill for more hours of service than it actually provided. We estimated that this policy allowed the Division to technically bill the Division of Workers' Compensation for about 1,725 hours more than actually worked in Fiscal Year 1996. Additionally, this policy failed to accurately reflect the amount of time it takes the ALJs and paralegals to perform various activities. As a result of not reconciling the billed hours to actual hours worked, the Division could not accurately analyze its workload, identify ways to become more efficient, or plan effectively for future needs.

Recommendation No. 7 (May 1997):

The Division of Administrative Hearings should reassess its minimum billing increments and reconcile billed hours to actual hours to ensure that billed hours to agencies are appropriate for the hours of service provided.

Division of Administrative Hearings Response (May 1997):

Agree. The Division of Administrative Hearings already has reassessed its minimum billing increment, met with its principal client agencies on May 16, 1997, and plans to go to a six-minute minimum increment with a reconciliation to actual time worked, beginning on July 1, 1997, along with a direct appropriations approach to funding.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has not been implemented. Although the Division went to a six-minute billing increment, it has not reconciled the actual hours worked to the billed hours. Most importantly, the Division has not implemented a billing policy that ensures that billed hours to agencies are appropriate for the hours of service provided. As discussed in Chapter 1 of this report, billing to client agencies remains problematic. In Fiscal Year 2000 the Division overbilled some agencies and underbilled others.

Evaluate Case Complexity

In our 1997 audit we found that the number of merit hearings conducted by the Division had decreased by about 34 percent since Fiscal Year 1992. The number of hours spent on these hearings could be expected to decrease at a comparable rate. However, the hours billed to the Division of Workers' Compensation for these hearings only decreased by 18 percent. Additionally, the average length of the time billed for conducting a merit hearing increased 23 percent since Fiscal Year 1992. Division of Administrative Hearings management stated that the cases going to hearing took longer and cost more because they were more complex. The Division of Workers' Compensation had questioned the Division's claim of case complexity. However, the Division was not able to support its claims of case complexity and had not developed any qualitative measures to objectively evaluate case complexity.

Recommendation No. 8 (May 1997):

The Division of Administrative Hearings should support its costs before billing the Division of Workers' Compensation on the basis of case complexity by:

- a. Developing qualitative measures to objectively evaluate and verify the complexity of its cases.
- b. Documenting changes in complexity on a case-by-case basis in order to support the need for increased billed hours and for workload management.
- c. Communicating any changes in billing basis and policy to the Division of Workers' Compensation and other affected agencies.

Division of Administrative Hearings Response (May 1997):

Agree. (a) The Division of Administrative Hearings is dependent on the Division of Workers' Compensation computer system for programs to come up with more refined qualitative measures to objectively evaluate and verify the complexity of cases, i.e., issues number of expert witnesses, etc. The Division of Workers' Compensation just recently has had these programs available and the Division of Administrative Hearings will begin documenting complexity of cases on September 1, 1997.

(b) Documenting changes in complexity on a case-by-case basis will begin on July 1, 1997, and new baselines, for purposes of comparison, will be developed throughout

the fiscal year and, through communication with the Division of Workers' Compensation, the Division will jointly develop a better handle on workload analysis for budgetary purposes.

(c) Based on the May 16, 1997 meeting, the Division has already communicated the proposed changes in the billing basis to the Division of Workers' Compensation, Department of Human Services, Department of Health Care Policy and Financing, and the Department of Regulatory Agencies.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has not been implemented. The Division of Workers' Compensation is still concerned about the Division of Administrative Hearings' claim of case complexity. As discussed in Chapter 2, the substantial decrease in the number of hearings held since Fiscal Year 1996 reinforces the importance of this recommendation.

Improve Billing, Recording, and Collecting for Services

In our 1997 audit we found that the Division of Administrative Hearings had not collected or recorded on the State's accounting system (COFRS) more than \$520,000 from billed agencies since Fiscal Year 1992. Actual costs of programs were not reflected on the billed agencies' financial records, nor were these agencies held accountable for meeting their financial obligations. This can cause problems for future planning and budgeting for adjudication services because there are no actual historical costs on which to base plans and budgets.

Recommendation No. 9 (May 1997):

The Division of Administrative Hearings should:

- a. Record all amounts billed to agencies on the State's accounting system.

- b. Use the State's collection process when an agency does not pay for services provided.
- c. Prepare interagency agreements with billed agencies that clearly outline the terms of the billing relationship.

Division of Administrative Hearings Response (May 1997):

Agree. (a) The Division has, for many years, recorded all amounts billed to client agencies for services provided but has not recorded these amounts on COFRS. The problem arises when amounts go over the agencies' appropriateness and the agencies are not legally obligated to pay.

(b) Partially agree. Using the State's collection process when an agency cannot pay for services provided over its appropriation would engender extremely poor client relations for the Division of Administrative Hearings. The thrust of the audit report seems geared to creating better client relations. However, we agreed that this process should be used in order to write off excess billings as an accounting practice.

(c) The use of interagency agreements is a better way to deal with amounts over a client-agency's appropriation. Also, the Division is working on a plan with its client-agencies to allow each client-agency to help one another achieve, and pay for, the level of services it needs.

Office of the State Auditor's Evaluation of Actions Taken (September 2000):

This recommendation has not been implemented. As discussed in Chapter 1 of this report, the Division's financial management is still problematic. The Division has overbilled some agencies and underbilled others. Although directed by the State Controller in July 1998 to record all billings appropriately on COFRS, it has not done so.

Work With Agencies to Improve Revenue Estimates

In our 1997 audit we found that the Division of Administrative Hearings did not have any input into the hours that client agencies requested for its services. It did not have a systematic method of coordinating with the agencies. State agencies are required to include requests for administrative law services in their budget submissions to the Office of State Planning and Budgeting (OSPB) that are later submitted to the Joint Budget Committee (JBC). The Division operates on a break-even basis. It must collect enough revenues from client agencies to cover its total costs. However, many times the appropriation for administrative law services did not match the hours actually needed and/or used by the agencies.

Recommendation No. 10 (May 1997):

The Division of Administrative Hearings should develop a formal process to coordinate with agencies requesting adjudication service hours. Hours should be estimated based on historical data and anticipated trends. The Division should report its estimates to the Office of State Planning and Budgeting.

Division of Administrative Hearings Response (May 1997):

Agree. The Division of Administrative Hearings had its first meeting with major client agencies on May 16, 1997, to jointly work toward a new funding mechanism, that is, a direct appropriation approach based upon real-time reporting for management purposes to anticipate trends and needs. Also, the Division will work more closely with the Office of State Planning and Budgeting, in conjunction with its client-agencies, to come up with better data to estimate anticipated needs for the succeeding fiscal year. The Division agrees with the OSPB response.

Office of State Planning and Budgeting Response (May 1997):

Agree. It is important to the Office of State Planning and Budgeting that department budget requests accurately reflect the need for adjudication services. Without accurate and timely reporting, departments will include the previous year's level of funding in their next year's budget request. This is done to protect their base appropriation.

OSPB will work closely with the Division of Administrative Hearings to use reports of actual hours used to develop future budget requests. The departments will, however, be given the opportunity to argue for variances from that level of funding if they believe there are factors which may affect the request year differently than the experience reported for the previous year. This process should improve the budgeting allocation for all parties involved.

**Office of the State Auditor's Evaluation of Actions Taken
(September 2000):**

This recommendation has not been implemented. As discussed in Chapter 1, the Division has not implemented sound, financial management practices. It has not coordinated with its client agencies on workload.

Streamline Funding for Workers' Compensation Hearings

In our 1997 audit we found that the funding method for workers' compensation hearings did not work well and did not promote accountability. Problems resulting from the funding structure included:

- C The Division of Administrative Hearings was not able to collect the full amount of money billed to the Division of Workers' Compensation once the latter's administrative legal services appropriation had been depleted.
- C The Division of Workers' Compensation cannot control the workers' compensation hearings workload. Therefore, it cannot control the level of expenditures related to workers' compensation cases to manage its appropriations.
- C The Division of Workers' Compensation did not base its request for workers' compensation hearing hours on actual historical usage data. As a result, hearing hours appropriated were not realistic.

Recommendation No. 11 (May 1997):

The Division of Administrative Hearings should work with the Division of Workers' Compensation and the Office of State Planning and Budgeting to develop a method to fund workers' compensation hearings that would address the current problems and ensure accountability. This method should reflect the unique relationship between the Division of Workers' Compensation and the Division of Administrative Hearings.

Division of Administrative Hearings Response (May 1997):

Agree. The Division of Administrative Hearings began working with the Division of Workers' Compensation in April 1997 and had a very important meeting on May 16, 1997, to develop a better method to fund workers' compensation hearings, i.e., a direct appropriation approach based upon real time reporting as a management tool to estimate workloads and future needs for adjudication services. The Division agrees with the OSPB response.

Division of Workers' Compensation Response (May 1997):

Agree. The Divisions of Workers' Compensation and Administrative Hearings began working on such a process in March 1997 to establish a more predictable billing methodology.

Office of State Planning and Budgeting Response (May 1997):

Agree. There is a need to review and develop a different method for funding adjudication services for the Division of Workers' Compensation. This issue was raised with OSPB in August of 1996 by the Departments of Labor and Employment and Personnel. At that time, the issues were discussed, but the decision was to retain the current funding method. This decision needs to be reconsidered given the unique relationship between Administrative Hearings and Workers' Compensation, and the type of service provided.

OSPB will work with these agencies to develop an appropriate funding method this summer and will reflect the final proposal in the Fiscal Year 1999 Executive Budget Request which will be submitted to the JBC on November 1, 1997. It is important to point out that any such proposal will only be implemented if the Joint Budget Committee and the General Assembly approve it and incorporate it in the Fiscal Year 1999 appropriateness bill.

**Office of the State Auditor's Evaluation of Actions Taken
(September 2000):**

This recommendation has not been implemented. According to Division management, it met with representatives from the Division of Workers' Compensation, Human Services, Regulatory Agencies, and Health Care Policy and Financing in January 2000. All four agencies supported a direct appropriation. However, according to management, the Joint Budget Committee staff did not support the change in funding approach, and thus, it was never presented to the General Assembly. Nevertheless, this is still an important issue. Many of the problems identified in Chapters 1 and 2 of this report are the direct result of the funding structure. Once again, we are recommending in Chapter 1 that the Division evaluate alternative funding methods.

Distribution

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